

INITIAL DECISION RELEASE NO. 416-A  
ADMINISTRATIVE PROCEEDING  
FILE NO. 3-13871

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

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In the Matter of	:	
	:	CORRECTED INITIAL DECISION <sup>1</sup>
RONALD S. BLOOMFIELD,	:	April 26, 2011
ROBERT GORGIA,	:	
VICTOR LABI,	:	
JOHN EARL MARTIN, SR., and	:	
EUGENE MILLER	:	
	:	

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APPEARANCES: Adam Grace and David Stoelting for the Division of Enforcement, Securities and Exchange Commission

Robert B. Martin, Jr., for Ronald S. Bloomfield and John Earl Martin, Sr.

Robert Gorgia pro se

Michael Kalmus for Victor Labi on a limited basis

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

On April 27, 2010, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP), pursuant to Section 8A of the Securities Act of 1933 (Securities Act) and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Exchange Act). On August 20, 2010, Eugene Miller (Miller) entered into a settlement with the Commission, and was ordered to cease and desist from committing or causing any violations of Section 17(a) of the Exchange Act and Exchange Act Rule 17a-8, suspended from

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<sup>1</sup> This Corrected Initial Decision omits portions of the Initial Decision issued on April 14, 2011, based on information from the Treasury Department's Office of Financial Crimes Enforcement that portions of that Initial Decision might violate provisions of the Bank Secrecy Act of 1970. Because of those concerns the following portions of the record shall receive confidential status: Tr. 50, 64, 68, 80-81, 95, 100, 104, 106-07, 120-24, 136-39, 143-46, 163-64, 172, 404, 415, 429, 481, 516-18, 787, 817, 820, 822, 834-35, 840, 844, 1020, 1349. See 17 C.F.R. § 201.322(b).

association in a supervisory capacity with any broker or dealer for twelve months, and required to pay a civil penalty of \$50,000. See Ronald S. Bloomfield, Exchange Act Release No. 62750.

I heard testimony from fifteen witnesses, including four Respondents, and accepted 384 exhibits into evidence over six days of hearing in New York City and Los Angeles.<sup>2</sup> The final brief was filed on December 7, 2010.

### **Issues**

Whether, from early 2005 to the middle of 2007:

Ronald S. Bloomfield (Bloomfield), Victor (Labi), and John Earl Martin, Sr. (Martin), willfully violated Sections 5(a) and 5(c) of the Securities Act by selling unregistered securities to the public;

Robert Gorgia (Gorgia) failed reasonably to supervise Bloomfield, Labi, and Martin within the meaning of Sections 15(b)(4) and 15(b)(6) of the Exchange Act, with a view toward preventing and detecting violations of Section 5 of the Securities Act; and

Bloomfield, Gorgia, Labi, and Martin willfully aided and abetted and caused the broker-dealer's violations of Section 17(a) of the Exchange Act and Exchange Act Rule 17a-8.

### **Findings of Fact**

My findings are based on the record and my observation of the witnesses' demeanor. I applied preponderance of the evidence as the applicable standard of proof. See Steadman v. SEC, 450 U.S. 91, 102 (1981). I have considered and rejected all proposed findings, conclusions, and arguments raised by the parties that are inconsistent with this Initial Decision.

### **Leeb Brokerage Services, Inc. (Leeb)**

In 2005 and until July 20, 2007, Leeb was a registered broker-dealer with its main office at 500 Fifth Ave., New York, New York (New York office), and a branch office at 501 Santa Monica Blvd., Santa Monica, California (California office). Tr. 266, 413, 1236, 1244; Div. Ex. 1 at 13. Leeb was a small operation with fifteen brokers. Div. Ex. 17 at 249. The New York office was located adjacent to two other businesses run by Stephen Leeb, who appears to have owned the broker-dealer. Tr. 427, 440, 1071. Miller was Leeb's President and CEO from April 2004 to April 2007. Tr. 490, 533. Lana Gayevsky (Gayevsky) was Leeb's Vice President – Operations. Div.

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<sup>2</sup> I will cite to the transcript of the hearing as (Tr. \_\_\_\_). I will cite to the Division of Enforcement's (Division) and Respondents' exhibits as (Div. Ex. \_\_\_\_), and (Gorgia Ex. \_\_\_\_), (Labi Ex. \_\_\_\_), (Bloomfield Ex. \_\_\_\_), and (Martin Ex. \_\_\_\_), respectively. I will cite to the Division's and Respondents' Post-Hearing Briefs, and the Division's Reply Brief, as (Div. Post-Hearing Br. \_\_\_\_), (Gorgia Post-Hearing Br. \_\_\_\_), Bloomfield and Martin Post-Hearing Br. \_\_\_\_), and (Div. Reply Br. \_\_\_\_), respectively.

Ex. 59. She sat at the trading desk, entered trades, and filled out most of the account paperwork, like opening the accounts and getting needed documentation. Tr. 641.

In 2005, Leeb became involved in a new business: transactions in low-priced securities, primarily through the activities of Labi and Bloomfield. Tr. 98-99, 116-17. In 2005, low-priced securities were of interest to regulators because of concerns that promoters who were paid in shares would pump up the price of the securities and then sell the restricted securities into the public market at inflated prices. This type of behavior occurred in transactions referred to as private investment in public equity (PIPE) transactions.<sup>3</sup> Tr. 116-17. PIPE transactions involve unregistered securities usually in the form of common, preferred, or convertible shares priced at a penny or less, acquired directly from the issuer and sold in blocks of ten million shares or more in private transactions. Tr. 97-98; Div. Ex. 1 at 8. The possibilities of manipulation are heightened because the securities are low priced and the securities are not publicly known. Tr. 98.

From March 2005 through December 2006, customer accounts at Leeb engaged in 1,193 transactions of over three billion shares of securities valued at less than one cent, and the net proceeds of these transactions totaled over \$2.5 million. Tr. 261-62; Div. Ex. 359. Leeb accounts sold over three billion shares, and purchased a little over 557 million shares, a disparity which indicates that most shares that were sold were delivered into the seller's account. Tr. 262-63; Div. Ex. 359.

Bloomfield, Labi, and Martin had customers that bought and sold low-priced securities in accounts at Leeb – Gerald Alexander (Alexander), CJB Consulting, Inc. (CJB Consulting), CMGI Corporate Architects (Corporate Architects), DCF Group, Chris Dillow (Dillow), Firemark Capital, LLC (Firemark), Lawrence Kaplan (L. Kaplan), Todd Kaplan (T. Kaplan), James Herbert (Herbert), IBIS Energy LLC (IBIS Energy), OTC Services, Inc. (OTC Services), Scott R. Sieck (Sieck), Thimble Capital, Inc. (Thimble), Darrell Uselton (D. Uselton), Jack Uselton (J. Uselton), Mark Uselton (M. Uselton), (collectively, the Useltons), Valores Fund, LLP (Valores), and Warrior Capital, LLC (Warrior Capital).<sup>4</sup> Div. Ex. 1

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<sup>3</sup> A PIPE offering “involves the investor’s acquisition directly from the issuer [,] of publicly traded common shares or some form of preferred stock or convertible security. The acquired shares are not registered with the SEC at the time of acquisition.” Div. Ex. 1 at 8.

<sup>4</sup> The Commission approved the Financial Industry Regulatory Authority (FINRA) as successor to the National Association of Securities Dealers, Inc. (NASD) on July 26, 2007. This Initial Decision will refer to FINRA for both self-governing organizations. J. Uselton entered into a consent agreement with the Commission in October 2002, concerning a pump and dump scheme. Div. Ex. 7 at 3. He was enjoined from violating the anti-fraud provisions of the Exchange Act and Securities Act and barred from serving as an officer or director of any public company. Tr. 1356; Div. Exs. 7 at 3, 106. In March 2004, FINRA fined D. Uselton, a nephew of J. Uselton, \$15,000, and suspended him as a broker-dealer principal for one year and from association with any FINRA member in any capacity for six months (NASD Case #C05040009). Tr. 818, 1230; Div. Exs. 7 at 2, 106. In the same proceeding, M. Uselton was fined \$5,000 and suspended from association with any FINRA member in a financial or operations capacity for six months. Div. Ex. 106. Bloomfield

Leeb customer accounts held low-priced securities, also known as penny stocks, of many issuers – Adrenaline Nation Entertainment, Inc. (Adrenaline Nation); Advanced Powerline; CDIJ Developments, Inc. (CDIJ Developments); China Gold Corp. (f/k/a Morning Star Holdings, Inc., f/k/a Ravenswood Associates, Inc.) (China Gold); Equipment and Systems Engineering, Inc. (Equipment Systems); Golden Apple Oil and Gas, Inc. (f/k/a CDIJ Developments, Inc., f/k/a Home Warranty Services of America, Inc.) (Golden Apple); Goldmark Industries, Inc. (f/k/a Research Funding, Inc.) (Goldmark Industries); Heartland Energy; ID Global Corp. (ID Global); Imperia Entertainment; Index Oil Industries; Industrial Nanotech; Instarcare Corp; iPackets International, Inc. (iPackets); Lifeline Biotechnologies, Inc. (Lifeline Bio); LOM Logistics, Inc. (LOM); Natural Harmony Food; Nanoforce; Spooz, Inc. (Spooz); Trendsetter; Veltex Corp.; Viyya Technologies, Inc. (Viyya); and WMD Holdings. Div. Ex. 1, Ex. C. Penny stocks, defined in Exchange Act Rule 3a51-1, are generally stocks priced at less than five dollars per share that are not traded on a qualified national securities or automated quotation system sponsored by a Commission-registered national securities association and have shareholders' equity of less than \$5 million. Div. Ex. 1 at 10. Many penny stocks are unregistered with the Commission so investors cannot review a registration statement with audited financial statements. Id. Penny stocks are particularly susceptible to manipulation because the issuer's financial condition has not been disclosed. Tr. 417; Div. Ex. 1 at 10. Penny stocks are typically issued by a corporate shell or a start-up company with no business activity. Div. Ex. 1 at 11. They are illiquid and are often owned by a small group of investors, which makes it easy for participants in a manipulative scheme to acquire large quantities of stock, inflate the stock price, and then sell shares at artificially inflated prices. Id.

Leeb had Supervisory Procedures Manuals (SPM) effective April 2005 and June 2006. Div. Exs. 17, 91. The SPM effective for most of 2005 until mid-2006 provided that the Chief Compliance Officer (CCO):

is responsible to establish, maintain, and enforce the Company's Supervisory Control System, described in Section 3.2 below. In general, the CCO must attempt to ensure that the compliance and supervisory procedures outlined in this Manual are up-to-date, effective, and followed by all respective Company personnel. The CCO will oversee all compliance functions of the Company. By implementing required testing of the Supervisory System, the CCO will be able to verify adherence to procedures and promptly rectify lapses in compliance.

Div. Ex. 17 at 15.

Leeb did not have procedures in place to determine whether the securities it received into customer accounts were restricted securities. Tr. 443. Restricted securities do not always bear a restrictive legend. Tr. 296. Some securities in the Leeb accounts had restrictive legends and some did not. Tr. 267.

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testified that he closed all accounts related to D. Uselton when he was arrested by the Texas Attorney General. Tr. 1345.

## **Bloomfield and Martin**

Bloomfield earned his undergraduate degree from the University of California, Los Angeles, and an MBA from the University of Southern California. Tr. 1438. He has been associated with seven or eight securities firms since 1972 and has been a supervisor since 1985. Tr. 1161, 1409-10. Based on his demeanor and his testimony, I find that Bloomfield was not credible.<sup>5</sup>

Martin is a graduate of the University of Southern California who began working in the securities industry in 1978, working on the floor of the Pacific Stock Exchange where he became a “specialist.” Tr. 1699-1700. Martin holds a Series 7 license. Tr. 1699. He considers himself a specialist in trading penny stocks and has been a profitable producer among registered representatives. Tr. 1735-36. Martin had been the subject of a FINRA action. Tr. 1730.

Martin and Bloomfield joined Western International Securities (Western) as registered representatives in 2003 and were asked to leave in 2004-2005 because of a number of red flags about Martin’s transactions and because the clearing firm, Bear Stearns, gave Western the option of closing the Useltons accounts or finding another clearing firm.<sup>6</sup> Tr. 1229, 1735-36. Bloomfield called Miller who he had known since 1988. Tr. 418. On March 4, 2005, Leeb applied to FINRA to establish an OSJ where Bloomfield and Martin would work for Leeb.<sup>7</sup> Div. Ex. 12. The application stated that Gorgia would supervise Bloomfield. Id.

Martin joined Leeb in November 2004, and Bloomfield joined Leeb in August 2005, when FINRA approved the California office as an OSJ, with Bloomfield in charge.<sup>8</sup> Tr. 519, 1235-36. Martin and Bloomfield transferred their customer accounts from Western to Leeb. Tr. 1235, 1238. Bloomfield and Martin operated the California office as a team. Tr. 424, 517, 1238, 1241. Almost all the penny stock trading was done by Martin for his customers, and all orders were unsolicited. Tr. 1219, 1241, 1332, 1365, 1419. Martin’s commissions were divided among Leeb (ten or twenty

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<sup>5</sup> Bloomfield’s testimony was almost totally inconsistent and self-serving. For example, Bloomfield never saw anything at Leeb that warranted filing a Suspicious Activity Report (SAR). Tr. 1348. It is disingenuous for Bloomfield to claim that he was not the anti-money laundering (AML) officer in the California office, and he was unaware that he should have been monitoring accounts for suspicious activity, when he signed a statement Leeb submitted to FINRA in 2005 saying he would be the AML officer for Leeb’s California office. Tr. 277, 876, 1301-05; Div. Exs. 32, 80, 81. In his investigative testimony, he stated that he sent deposited shares to the clearing firm and the transfer agent. Tr. 1224-25. However, at the hearing, he testified that he sent a package, including the share certificates, to the New York office, which approved depositing the shares in the customer’s account and sent the certificates to the clearing firm. Tr. 1202-09.

<sup>6</sup> Bloomfield and Martin operated out of a separate Office of Supervisory Jurisdiction (OSJ) in Santa Monica, California. Tr. 1723.

<sup>7</sup> FINRA took some time approving Leeb’s California office because it had concerns. Tr. 827. Leeb occupied the same office space that Western had occupied. Tr. 1244.

<sup>8</sup> Miller supervised Martin before FINRA approved the California office. Tr. 1201, 1240.

percent), Bloomfield (seventeen and a half percent), and Martin, the remainder. Tr. 219, 1417, 1439; Div. Ex. 348.

According to Bloomfield, Martin was responsible for knowing his customer and doing due diligence on the security, and Bloomfield verified that there had been a reasonable determination that the stock being delivered into a customer's account was unrestricted and free trading. Tr. 1206-07, 1257, 1450, 1457-58. In his investigative testimony, Martin stated he did not investigate the source of customer shares, but he testified that he made a reasonable inquiry by asking customers where they got their shares, how long they had held the securities, and whether they were affiliated with the issuer, all to establish that the customer was not selling Rule 144 restricted stock, control stock, or affiliate stock; however, Martin testified he did not always make these oral inquiries, and, when he did, he failed to document them. Tr. 1451-54, 1469-70. Martin knew that many of his customers did promotional work for small companies and were paid in the company's stock. Tr. 1498. He considered these shares to be free trading shares. Tr. 1499.

Martin testified with apparent sincerity, but his positions are not reasonable. For example, Martin was the representative on accounts controlled by the Useltons and on the Thimble account. Div. Ex. 1 at 15. The Useltons represented that they purchased shares from persons who acquired them in Rule "504 offerings." Tr. 1195. D. Uselton controlled Firemark, Warrior Capital, Valores, and OTC Services, and J. Uselton controlled IBIS Energy. Tr. 563; Div. Ex. 1 at 15-16. Ostensibly these companies made private investments; performed banking, finance, or promotional work through websites or emails; or made oil and gas investments. Tr. 563-64; Div. Ex. 1 at 15-16. Martin worked as a trader/market maker and investor for several years for one of D. Uselton's companies, National Capital, and they are close friends. Tr. 1456, 1467, 1586-87; Div. Ex. 7 at 5. Martin believes that he and D. Uselton both suffered financial losses unjustly in a matter involving a transfer agent and a stock certificate. Tr. 1456-57, 1466-67. Based on this shared experience and his belief that he knew D. Uselton, Martin concluded that it made "common sense" that D. Uselton would not deposit restricted shares in accounts he opened with him. Tr. 1456-58. Martin has no documentation that shows the eighty to one hundred stocks that D. Uselton traded in his Leeb accounts were free trading. Tr. 1454-56.

Martin inexplicably considered the people associated with Thimble honest investors because they traded dozens of stocks, and he believed "one guy was Phi Beta Kappa from Stanford, an international economist who wrote books," and these "people knew what the rules were" and would not deposit restricted certificates with him. Tr. 1458-59. Martin believed Thimble became his customer because of Martin's ability to scrutinize the market and his reputation as a "straight man on the street;" however, the record shows that Thimble likely used Martin because he did not investigate whether securities were legitimately eligible for public sale. Tr. 1460-62. The record does not support an assumption of legitimacy. Thimble was a foreign entity incorporated in the island of Nevis with a mailing address there, an office in Vancouver, British Columbia, Canada, and its traders placed orders from Costa Rica and Panama. Tr. 381, 392, 1299-300; Div. Ex. 1 at 15. Thimble's owner and sole officer was Michael Laidlaw (Laidlaw), a senior financial adviser at Corporate House, which reportedly bought and sold newly issued private placements. Tr. 392, 1300. Thimble had the same phone number as Corporate House. Div. Ex. 1 at 15. As detailed later, Thimble made large deposits of securities into its account from unknown sources and transferred large sums to foreign bank accounts,

Martin passed customer account information on to Bloomfield, who he believed did the paperwork. Tr. 1450. Martin testified he was unaware that Bloomfield, who worked in the same office, but in a different room, did not obtain any documentation regarding shares that customers were depositing into their accounts. Tr. 1473. Bloomfield testified that his due diligence review consisted of checking PinkSheets.com, the issuer's website, two "trading platforms" that show the history of a security, and looking at the face of the certificate. Tr. 1206-07. Bloomfield assumed that shares were free trading, if the certificate did not show a restriction. Tr. 1212. Neither Bloomfield nor Martin had documentation that showed they made inquiries of customers about the securities they deposited into their accounts. Tr. 1195. Bloomfield claimed it was because either the Texas Attorney General or the Commission seized the records, but then denied that was true. Tr. 1195, 1198-99.

Of approximately 150 stocks deposited into customer accounts, Bloomfield could not recall one instance where he requested the contract or private placement documents by which the customer acquired the shares, or an opinion letter that the shares were free to trade. Tr. 1221. Bloomfield could not recall any security in a customer account that was covered by a registration statement on file with the Commission, but he notes there are probably ten thousand companies "that don't file registration statements, that are all public entities." Tr. 1197-98, 1204. Bloomfield acknowledged that customers transferred large blocks of penny stocks into their Leeb accounts, but he does not concede that these penny stocks were unregistered or that almost all the penny stocks were later sold out of the accounts. Tr. 1190-91. He denies that a Leeb customer who delivered large blocks of penny stocks into accounts and quickly sold them could be considered an underwriter, i.e., a person who acquires shares from an issuer with a view to distribution. Tr. 1191.

Bloomfield knew he and Martin had an obligation to know their customers and to make a reasonable inquiry on where the customer obtained securities. Tr. 1192-94. Bloomfield insists that he and Martin followed Leeb's procedures, and that he followed procedures that Miller had put in place when he supervised Martin. Tr. 1200-01. Bloomfield does not recall Gorgia asking him what his reasonable inquiry procedures were, or that he had to obtain more documentation about securities being deposited. Tr. 258. Bloomfield knew that D. Uselton engaged in stock promotional activities and that he received stock in companies as compensation. Div. Ex. 106. Bloomfield did not inquire whether D. Uselton was promoting the low-priced securities he deposited into Leeb accounts because he did not think it was relevant. Tr. 1326.

Bloomfield knew that Warren Soloski (Soloski), a Martin customer, was an attorney who in 2003, settled a Commission proceeding alleging insider trading, and that Soloski settled a Commission proceeding involving an alleged pump and dump scheme in April 2004, but he did not place Soloski's account under heightened scrutiny. Tr. 819, 1342. Bloomfield testified consistently that he did not put customers on heightened scrutiny because he already had them under the highest scrutiny possible. Tr. 1432-33.

The Division estimates that in the period October 1, 2005 to June 1, 2007, Martin and Bloomfield earned commissions of \$964,868 and \$272,342, respectively, from trading in the Firemark, IBIS Energy, OTC Services, Sieck, Thimble, Valores, and Warrior Capital accounts at Leeb. Div. Ex. 362. D. Uselton informed Bloomfield on January 26, 2006, that Sieck, who had an

account at Leeb, was a new minority partner in Warrior Capital. Div. Ex. 70. Bloomfield opened an account for Sieck knowing that Sieck had been charged with stock manipulation, and he did not put the account under heightened supervision. Tr. 1337-38. Bloomfield did not know where or how Sieck acquired the one million shares of Spooz he deposited in his account on August 15, 2005. Tr. 1341-42; Div. Ex.1, Ex. D at 53.

On February 7, 2006, Bloomfield filled out a low-priced securities questionnaire, a form used to assure clearing firms that the introducing broker had performed due diligence with respect to a security, for receipt into the Thimble account of 749,000 shares of China Gold on January 12, 2006. Tr. 38, 1395-96; Div. Ex. 181. Based on what someone at Thimble told him, Bloomfield represented on the low-priced securities questionnaire that the China Gold shares had been purchased in a private sale and the original seller had no connection to China Gold. Tr. 1397-99. Bloomfield did not request supporting documentation. Tr. 1399, 1403. In fact, the original seller of the securities was China Gold's consultant to North America. Tr. 1404; Div. Ex. 196. Bloomfield was unaware that six days before the shares were deposited, China Gold changed its name and stock symbol, and, prior to the deposit, there had been no transactions in China Gold for at least a month. Tr. 1402-03.

On twenty-one occasions in the period October 14, 2005 to May 10, 2006, the Thimble account at Leeb's California office wired a total of \$13,649,451, cleared by Pershing LLC (Pershing), to a Thimble account at Hypo-Alpe-Adria Bank (Liechtenstein) AG (Thimble Liechtenstein).<sup>9</sup> Div. Ex. 355. In 2002 and again in 2008, the Organisation for Economic Co-operation and Development (OECD), a group of thirty-four countries dedicated to global development since 1960, included Liechtenstein on a "List of Unco-operative Tax Havens" as a jurisdiction that had not made a commitment to transparency and effective exchange of information. Tr. 1366-68; Div. Exs. 126, 127; [www.oecd.org](http://www.oecd.org).

In the period June 9, 2006 to June 18, 2007, the Thimble account at Leeb's New York office wired funds on thirty-seven occasions to Thimble Liechtenstein and on three occasions wired funds to Thimble at CIBC Bank & Trust Company (Cayman) Limited (Thimble Cayman), totaling \$28,677,808, cleared by Legent Clearing LLC (Legent).<sup>10</sup> The total amount that was wired from Thimble accounts at Leeb to Thimble Liechtenstein was \$41,455,234.<sup>11</sup> Tr. 182; Div. Ex. 355.

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<sup>9</sup> Bloomfield testified that after the transaction had been settled and funds were in the customer's account, he sent instructions for wires to Leeb's New York office where someone, normally Gayevsky, and a clearing house approved the wires. Tr. 1288-93. The funds went to a correspondent bank in New York and then to accounts in Liechtenstein. Tr. 1290-94.

<sup>10</sup> Pershing was succeeded as clearing agent by Legent. Tr. 234; Div. Ex. 358.

<sup>11</sup> The Division's witnesses included Peter Lamore (Lamore) and Jennifer Conwell (Conwell), staff accountants in the Commission's broker-dealer inspection program, and Elzbieta Wraga, a Division securities compliance examiner. Tr. 176-77, 229, 258. According to Lamore, two additional wires to Thimble Liechtenstein from Thimble's account at Leeb's California office for \$993,834 on June 4, 2006, and for \$994,253 on May 25, 2006, were inadvertently omitted from Div. Ex. 355. Tr. 182-83; Div. Ex. 124.

Between September 7, 2005 and December 22, 2005, another Leeb account, Hottentot Limited (Hottentot), wired \$233,838 to the same Thimble Liechtenstein account. Tr. 185-87, 211-12; Div. Ex. 356. The ultimate beneficiaries of the wire transfers were Thimble and Hottentot, at the same account number. Tr. 213-14; Div. Ex. 356. Hottentot, incorporated in Belize, was owned by Laidlaw, and had the same mailing address as Thimble in Vancouver, British Columbia, Canada. Div. Exs. 41, 43. D. Uselton had discretionary authority in the Hottentot account. Div. Ex. 41.

Bloomfield did not have any AML concerns or other suspicions of illegality about transfers of large sums of money to accounts in Liechtenstein. Tr. 1293-97. In his view, the U.S. correspondent bank had AML responsibilities and it should not have sent the wire if it had a problem with the ultimate foreign destination. Tr. 1294. Bloomfield is shown as a recipient of new AML Compliance Reports sent out by Legent on November 20, 2006. Div. Ex. 115.

On July 26, 2006, Legent emailed Bloomfield that it had questions about “penny stock transactions, journaling securities, and wiring of large amounts of cash,” in a number of Uselton accounts. Tr. 1276-77; Div. Ex. 97. Bloomfield did not put these accounts on heightened scrutiny because he believed he could not have done any more than he was doing. Tr. 1279. On September 18, 2006, Legent threatened to freeze, effective the next business day, all activity in the following Uselton accounts: Warrior Capital; Firemark; Legacy Trading, Inc. (Legacy Trading); IBIS Energy; Valores; OTC Services; and individual Uselton accounts because it did not receive the new account and due diligence documentation it requested on July 26, 2006. Div. Exs. 97, 105. Legent’s communication to Bloomfield stated, “All the individuals in the Uselton family have had regulatory and legal issues regarding past business practices.” Div. Ex. 105. Bloomfield quickly sent Legent the documentation it requested on September 18, 2006. Tr. 1315-20; Div. Ex. 106.

On August 10 and 23, 2006, Legent sent Bloomfield Moody’s Investor Services (MIS) Alerts, which consisted of background investigations that reported regulatory action by FINRA against J. Uselton and D. Uselton. Tr. 1284-85, 1425-26; Div. Exs. 99, 100. Bloomfield replied that he believed the information about D. Uselton had to do with closing his broker-dealer three years previously, and that unless there was more, they would continue to do business with him. Tr. 1285-86; Div. Ex. 101. On August 31, 2006, the clearing firm sent Bloomfield a MIS Alert noting Soloski had entered into a settlement with the Commission in which he acknowledged an injunction for violations of the securities statutes, and which suspended him from practicing as an attorney before the Commission. Div. Ex. 103.

Bloomfield received a MIS Alert on October 9, 2006, from Legent asking for a review of reported regulatory actions against M. Uselton and Robert L. Millstone, new customers in the California office. Tr. 1267-68; Div. Ex. 109. Legent sent Bloomfield an email on October 16, 2006, inquiring about a one million share certificate of American Security Resources Corp. that it received for deposit in the Valores account, along with a certificate of sole officer that had “sole officer” crossed out and “general partner” written in. Tr. 1269; Div. Ex. 111. Bloomfield replied on October 17, 2006, stating that D. Uselton was the only general partner and sole signatory for Valores. Div. Ex. 111. Legent sent an additional email on October 20, 2006, with questions about 3.7 million shares of Equipment Systems that it was going to place in a suspense account until it received clarifying paper work. Div. Ex. 112. On November 3, 2006, Legent sent Bloomfield MIS Alerts on reported regulatory action as to J. Uselton, Kyle Rowe, and Charles Tamburello. Div.

Exs. 113, 114. On January 2, 2007, Legent sent Bloomfield MIS Alerts on California office customers: Legacy Trading, M. Uselton, and Okin Roman. Div. Ex. 118.

In his investigative testimony, Bloomfield understood a red flag to mean something suspicious such as money drawn from third parties; money going to third parties; extraordinary deposits made into an account for no particular reason; putting stock into an account, not executing an order, and having the stock delivered out; third party requests; and J. Uselton's settlement of Commission charges. Tr. 1355-57. Nonetheless, Bloomfield testified that he did not consider D. Uselton's control of five different corporate accounts, or wire transfer of large amounts of funds to accounts in Liechtenstein as red flags. Tr. 1348-49.

In 1996, the National Futures Association (NFA) fined Bloomfield \$5,000, and barred him from acting as a principal and as a supervisor for three years, based on findings that he knowingly submitted false information to the NFA and failed to supervise the commodity futures sales activity of an unregistered person. However, the NFA allowed him to act as manager of a one-person branch. Tr. 1161-62, 1412; Div. Ex. 2. FINRA notified Bloomfield on April 1, 2010, that it had concluded an investigation on allegations that he supervised a registered representative, Martin, who made no effort to determine whether a registration statement was in effect and failed to inquire before selling a security where a customer acquired two million shares of unregistered stock. Tr. 1183-86, 1411; Div. Ex. 405.

Bloomfield did not introduce any testimony or evidence to support his position that he is unable to pay disgorgement or a penalty. Tr. 1441.

### **Labi**

Labi attended Northeastern University for three years, and was associated with at least six broker-dealers beginning in 1993, before joining Leeb. Tr. 594-95. Labi, who held Series 7 and 63, securities licenses, was a registered representative in Leeb's New York office from September 2002 to April 2007. Tr. 595, 602. Labi only executed orders, he did not have discretion in any account. Tr. 603.

Labi's testimony was inconsistent. He testified that he knew he had to make a reasonable inquiry as to the source of shares delivered into customer accounts, and he knew that penny stocks were used in connection with fraudulent schemes and money laundering. Tr. 632-33, 639. He also testified that he did not perform any due diligence with respect to his customers' penny stock transactions. Tr. 649-50. He did not inquire whether customers had any connection to the issuer. Tr. 651. Labi testified that at the time, he did not know he had an independent obligation to confirm that shares were free to trade, and that he relied on clearing house information on Leeb's computer screens that shares shown without a legend were free trading shares. Tr. 644-45, 647.

Labi told Miller that he did not do any checking when his customers' accounts received large blocks of stocks because he knew his customers and he believed they received stocks for providing financing to the issuer. Tr. 277-78. During the Division's investigation, Labi testified that he did not inquire how his customers obtained the stock. Tr. 650-52, 672. At the hearing, Labi testified that he asked his customers about the origins of the stock deposited in their accounts and

they might have said that they received the shares in connection with the services they provided to customers. Tr. 641-42.

Multiple accounts under different names under the control of the same person can be an attempt to hide the person's identity and are red flags. Tr. 1728-29. Labi knew that his customers: Alexander, L. Kaplan, Dillow, and Herbert had multiple accounts and these accounts included: CJB Consulting; Corporate Architects; DCF Group; Profit Capital Management, Inc. and Profit Capital Management, Ltd. (collectively Profit Capital); Regis Filia Holdings, Inc. (Regis Filia); Revel Holdings, Inc. (Revel Holdings); and TJ Ventures. Tr. 604-05, 634-35. Labi did not think the large blocks of penny stocks moving in and out of his customers' accounts were suspicious. Tr. 630-31. Labi never saw anything that concerned him about his customers' activities. Tr. 638, 650-51.

Labi did not inform Leeb's compliance department about instant messages (IMs) he received that told him of future promotional activities for penny stocks that he and the promoters knew would result in increased sales and share prices. Tr. 280-83, 684-85, 701-03, 707, 710, 715-17, 720-21, 723-24; Div. Ex. 1 at 32. Labi was fully engaged in these electronic exchanges; he did not ask any questions but did whatever was asked, including circulating the information to others, and expressed support, gratitude, and awe. Tr. 678-725; Div. Exs. 129-30, 132, 134, 136-37, 139. In October and November 2005, Alexander directed Labi to stop selling Spooz because the issuer had asked him to stop. Tr. 679-81; Div. Ex. 129. In October 2005, Labi passed on to one customer information provided to him from another customer that promotional activity would begin for a penny stock. Tr. 684-86; Div. Ex. 138. On February 7, 2006, Alexander directed Labi to buy Deep Blue Marine (DPBM) and that a major mailer was going out that night. Tr. 689-90; Div. Ex. 132. Labi bought ten thousand shares of DPBM for Alexander at \$0.78, which Alexander sold three days later for \$0.92. Tr. 694; Div. Ex. 133. Labi received commissions of \$400 on the purchase and \$450 on the sale. Tr. 695; Div. Ex. 133.

In October 2005, Labi represented to Alexander that he had a lot of private companies who wanted to go public to send Alexander's way and that he needed certificates; Alexander told Labi of upcoming promotional activity for Lifeline Bio; and he projected when certain penny stocks would peak and he would sell. Tr. 697-06; Div. Exs. 1 at 32, 130. In retrospect, Labi acknowledged that his communications with Alexander show an effort to manipulate the stock price. Tr. 705.

T. Kaplan had many communications about shares of a low-priced stock, called Aegis Assessment or AGSI. Tr. 707-16. T. Kaplan thanked Labi for Gloria Lieberbaum's purchase of fourteen thousand shares of AGSI made on December 12, 2005, based on information T. Kaplan provided Labi, including huge contracts by the United States Department of Homeland Security and other favorable events. Tr. 709-13. T. Kaplan told Labi that he was "fixing the AGSI" and he described laughter that followed an inquiry about its balance sheet. Tr. 714-15. After the promotions mentioned to Labi occurred, the volume and prices of the promoted securities spiked upwards. Tr. 283.

Labi paid \$20,000 to settle a FINRA customer complaint in 2002. Tr. 623. On October 28, 2009, Labi was found liable and ordered to pay \$450,000 in a FINRA proceeding concerning customer allegations of unauthorized trades in penny stocks from February 2006 to March 2007. Tr. 598-600, 621; Div. Ex. 398.

Labi testified that he does not have the financial ability to pay any penalties.<sup>12</sup> Tr. 757. Labi filed for Chapter 7 Bankruptcy on September 10, 2010. Victor Labi, No. 1:10-48584-cec (Bankr. E.D.N.Y.). The bankruptcy case was closed on December 14, 2010.

### **Gorgia**

Gorgia earned a Bachelor's degree and a Master's in International Affairs from St. John's University in 1970 and 1972, respectively. Tr. 949. He has worked in the securities industry since 1972 and holds Series 4, 7, 9, 10, 14, 24, 27, 53, 55, 63, 65, and 79 licenses. Tr. 949-51. Beginning in December 2004, Gorgia worked in Leeb's New York office twenty hours a week as Financial Principal and CFO. Tr. 780. While he worked part time at Leeb, Gorgia was also employed twenty hours a week as CCO and CFO for another brokerage firm, worked as an arbitrator with FINRA, and was a self-employed securities expert. Tr. 780, 957.

By March 2005, Gorgia was also Leeb's part-time CCO and AML officer. Tr. 102, 424-27, 471-72, 497, 779-81, 899; Div. Exs. 15 (redacted), 16. As CCO, Gorgia was Leeb's only compliance person. Tr. 849. Leeb paid Gorgia \$75,000 in 2005 and \$144,000 in 2006. Tr. 511-12, 984, 1044. Gorgia resigned June 15, 2006, and left the premises July 15, 2006. Tr. 1037.

As CCO, Gorgia was responsible for Leeb's supervisory control systems and for reviewing Leeb's wire transfers, IMs, and electronic communications. Tr. 433, 897-98, 903, 934. At the hearing, Gorgia retracted earlier investigative testimony that he allowed Bloomfield's wire requests to receive rubber stamp approval in the New York office. Tr. 903-06.

Gorgia knew that low-priced stocks are a compliance concern, and that due diligence required information about the source of the penny stock deposits, how the shares were received, and whether the account was controlled by a stock promoter. Tr. 808-10. Gorgia acknowledged that a red flag is raised when a customer regularly sells penny stocks delivered into his account. Tr. 931. Gorgia knew no one at Leeb investigated the accuracy or completeness of the information the client supplied for the low-priced securities questionnaires. Tr. 791-92. Gorgia also knew that customers deposited shares of low-priced stocks they acquired privately into their Leeb accounts, and Leeb's due diligence on account holders was lacking. Tr. 810, 814. Leeb had no documentation addressing how its personnel should treat low-priced securities, and Miller was unaware that Gorgia established any procedures for conducting a reasonable inquiry on penny stocks coming into Leeb accounts.<sup>13</sup> Tr. 432, 805-06. Leeb's April 2005 SPM showed Gorgia with

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<sup>12</sup> Labi's financial disclosure statement pursuant to Commission Rule of Practice 630 is Labi Ex. 1 (under seal).

<sup>13</sup> Miller testified that he did not know unregistered stocks were coming into Leeb or that funds were being transferred to Liechtenstein even though he was CEO, supervised the New York office, sat at the trading desk, and reviewed the trading tickets, trading blotter, and new account forms. Tr. 416, 423-24, 426, 432-33, 452, 476-77, 481-82. Gorgia introduced evidence of 349 wire transfers that Miller approved. Tr. 452-58, 460; Gorgia Exs. 1-41, 1-42. Miller testified that he or Gayevsky would set up the wires. Tr. 543. Miller does not recall approving that many wires and testified that

responsibility for investigating questionable broker activities and supervising monthly customer accounts; however, Gorgia did not review monthly customer statements. Tr. 897-98; Div. Ex. 17. Gorgia admitted that Leeb's supervisory procedures were flawed because neither he nor anyone at Leeb reviewed monthly customer statements. Tr. 898-99. Contrary to the representations in the SPM, Gorgia did not review Pershing's monthly exceptions reports to bolster Leeb's AML detection efforts, or the log of wire transfers. Tr. 899-01; Div. Ex. 10.

On June 5, 2005, Gorgia represented to FINRA that he was responsible for AML supervision at the California office. Tr. 842; Div. Ex. 32, Ex. E. Audits of Leeb's OSJ were required annually, but Gorgia represented to FINRA that he would audit the California office quarterly. Tr. 851-52. In a July 14, 2005 letter to FINRA, Gorgia represented that Martin would be supervised by Bloomfield, the supervisor in charge of the OSJ, and he and Miller would supervise Bloomfield and would not tolerate the slightest deviation from compliance. Tr. 847-50; Div. Ex. 35. Four days after making the representation, Gorgia learned that the Commission was charging Joshua Yafa (Yafa), a customer of Martin and Bloomfield, in a stock manipulation scheme. Tr. 850, 1342-43. Gorgia closed the Yafa account, but he did not ask Bloomfield or Martin what questions they asked customers before opening accounts, whether they adequately monitored suspicious activity in customer accounts, or inquired about their other customers. Tr. 850-51, 1342. Nothing in the record, except Gorgia's statements, shows Gorgia ever took, or asked for, any action against Bloomfield, Labi, or Martin for their compliance failures.

Gorgia visited the California office in August 2005 to perform an audit, but he found the files were so disorganized he was unable to do so. Tr. 436, 513, 853-54. There is no evidence that he did anything as CCO to remedy the situation. Gorgia admitted he did nothing during the visit to test whether Bloomfield was adequately supervising accounts in the California office and he did not check on whether the office was following procedures for inquiring about the low-priced stocks they were selling for customers. Tr. 855-56

On August 9, 2005, Gorgia reported to the Leeb Board that compliance exposure was reduced because of his activities, including increased interaction with Pershing, by which he meant receiving complaints from Pershing. Tr. 844-46; Gorgia Ex. 1-14. Gorgia's position is that he was so busy with accounting issues that he did not have time for compliance; however, he did not inform the Board that he needed AML assistance. Tr. 486-89, 493-95, 847.

On September 21, 2005, FINRA wrote to Gorgia seeking information about fifty-six securities traded by a Leeb account, Legacy Trading, controlled by M. Uselton. Tr. 856-58; Div. Ex. 45. FINRA followed with a letter on October 13, 2005, requesting information about correspondence between Leeb and Warrior Capital. Tr. 859-60; Div. Ex. 50. Gorgia admitted that Pershing's declaration stating it did not want to clear any transaction from the California office was a red flag. Tr. 860-61; Div. Ex. 56.

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Gayevsky was responsible for sending wires. Tr. 456. The wire transfers bear Miller's designation or password, and Leeb's SPM named Miller as the supervisor for reviewing wire transfers. Tr. 481-84; Div. Ex. 17.

Gorgia admittedly considered a November 15, 2005, letter from the State of Oklahoma, Department of Securities, requesting information about IBIS Energy and any related accounts, including, but not limited to the Useltons' accounts, a warning of possible illegal activities. Tr. 862; Div. Ex. 57. On November 22, 2005, Gayevsky emailed Gorgia asking him to make sure that Labi completed questionnaires for six large deposits of securities in customer accounts that she had requested but Labi had not completed. Div. Ex. 59.

Gorgia believes that brokers who receive certificates for deposit are responsible for investigating how the shares were acquired and whether they are free trading. Tr. 800. Gorgia stated that Leeb was responsible for questioning customers about the source of large amounts of securities deposited into customer accounts by third parties and other means, and that this was an AML issue. Tr. 798-02.

Despite the suspicious activities and red flags described above, an audit of Leeb's AML procedures by an outside firm that Gorgia hired, concluded in June 2005, that Leeb had not identified any unusual or suspicious activity or patterns of activity that required further inquiry, identified any red flags requiring inquiry (material omitted). Tr. 837-41; (material omitted). Gorgia, who arranged for the audit and who was one of the auditor's main contacts, did not consider the audit's conclusion inaccurate. Id.

A FINRA examination dated February 3, 2006, reported various apparent violations of FINRA rules, but did not mention penny stock trades. Div. Ex. 67. Gorgia replied to FINRA on February 17, 2006, citing "significant management changes" that occurred at Leeb in 2005. Div. Ex. 68.

Gorgia drafted a report covering March 2005-March 2006, that stated Leeb was establishing a new clearing arrangement to segregate the "penny stock" business. Tr. 915-16; Div. Ex. 73. The report did not state that in December 2005, Pershing gave notice to Leeb that it was terminating the clearing arrangement. Id. The report erroneously stated that Leeb had terminated PIPE transactions, when customers were still depositing shares of privately obtained penny stock and selling them to the public. Tr. 919-20.

On May 24, 2006, FINRA wrote to Leeb about a review of trading activity and requested new account documentation on customer accounts for John E. Martin, Warrior Capital, and Margenta Holdings Limited (Magenta). Div. Ex. 88. Gorgia responded with the requested information and additional information furnished previously to the Commission, at its request, on the security Sniffex and customer Margenta. Div. Ex. 89.

Gorgia arranged for a second review of Leeb's AML program by the same firm that did the 2005 audit in June 2006. Tr. 894-95; Div. Ex. 96. This AML report erroneously stated that all AML review processes and securities related processing for the New York and California offices were done at the New York office. Tr. 895. In fact, Bloomfield was the AML officer for the California office and there were no AML reviews of the California office. Tr. 896-97; Div. Ex. 96. The AML report describes reviews of customer accounts by Miller and the Compliance Department that did not take place. Id. It fails to mention the serious concerns of Leeb's clearing agent detailed below.

Gorgia testified that he was more focused on his CFO responsibilities of getting Leeb's financials in order than on his CCO responsibilities of compliance, and he did not have time to do all that was needed. Tr. 285, 301, 493, 826. Gorgia heard rumors that Labi's penny stock business was "dirty," but he was too busy to investigate. Tr. 931-33. Gorgia testified that he believed he had the power to close the California office and that he wanted to terminate Bloomfield in July 2005 and April 2006. Tr. 866-67, 874-75, 883. He claimed that Miller prevented him from taking action. Tr. 878. Gorgia claimed further that Leeb was a compliance nightmare, and he tried to deal with questionable activities, but Miller was more interested in the bottom line, turned a blind eye to what was going on, and overruled him when he tried to rein in Bloomfield and Martin. Tr. 285, 302, 521-23, 823, 882, 937; Gorgia Ex. 2-20 at 37.

### **Pershing**

Pershing performed the back office functions for many introducing broker firms, and in 2005 Leeb was one of Pershing's eight hundred introducing broker-dealer clients. Tr. 32-34, 46, 52, 101, 259. Introducing brokers have primary responsibility for knowing their customers, and detecting compliance and AML issues in transactions they engage the clearing broker to act on. Tr. 33-34, 61, 101. Pershing performed oversight activities to assure that introducing broker clients carried out their responsibilities. Tr. 94. The responsibilities of the clearing broker and the introducing broker are spelled out in New York Stock Exchange Rule 382 and FINRA Rule 3230. Tr. 32.

In the first half of 2005, Pershing's AML Officer, Todd Antworth (Antworth), became concerned because Leeb's activities in low-priced securities transactions appeared increasingly in Pershing's suspicious activity documentation, Pershing often had to bring concerns about specific transactions to Leeb's attention, Leeb's responses to Pershing's inquiries were unclear, and Pershing had concerns (material omitted). Tr. (material omitted) 96, 116-17; Div. Ex. 13.

Antworth raised his concerns with Pershing's senior management including Director of Compliance, Claire Santaniello (Santaniello), and with Gorgia. Tr. 38, 102; Div. Exs. 15 (redacted), 16. Gorgia was Antworth's main contact at Leeb. Tr. 103. In March 2005, Gorgia did not investigate Antworth's concerns about Bloomfield and Martin customers who routinely brought in privately obtained shares in penny stocks. Tr. 786-88; (redacted). Also, in March 2005, Gorgia did not investigate Pershing's concerns about three securities moving through, into, and out of at least seven Leeb accounts, three of which were Labi's customers, and did not place the accounts on heightened scrutiny. Tr. 788-89; (redacted). Gorgia did not investigate in April when Pershing repeated its inquiries about the three securities and the seven accounts. Tr. 790.

Beginning in the summer of 2005, Pershing sent Leeb low-priced securities questionnaires for Bloomfield, Labi, and Martin to complete to establish whether Leeb had done due diligence with respect to those transactions. Tr. 170, 274-75, 429-30, 441-42; Div. Ex. 26. In the first half of 2005, Leeb often did not return the low-priced securities questionnaires to Pershing, or returned them incomplete, with the names of persons with questionable reputations, or unsigned by a Leeb principal. Tr. 39; Div. Ex. 1 at 18 n.7. Pershing believed that Labi and Bloomfield engaged in questionable PIPE transactions. Tr. 47-48, 99.

On July 20, 2005, Pershing made Leeb aware of a 2004 newspaper article, “Phantom Financials – New Wave of Penny Stock Offerings Rises from Nowhere.” Tr. 118-19; Div. Ex. 8. The news report mentioned attorney David Stocker (Stocker) as a prominent player taking advantage of a loophole in Regulation D, and associated with worthless shell companies and low-priced securities. Tr. 39-40, 118, 160; Div. Exs. 8, 37, 42 (redacted). Gorgia closed Stocker’s account, but he did not investigate the account activities. Tr. 160, 827. Pershing also informed Gorgia that Stocker was counsel for three securities traded in other Leeb accounts. Tr. 828; Div. Ex. 37. Pershing also raised questions about the CJB Consulting account in the name of Alexander’s twenty-four-year old daughter, in which Alexander conducted trading. Tr. 830-31. Gorgia did not look at the account opening form and did not investigate the account. Tr. 830-31; Div. Ex. 33.

Pershing’s Vice President, Kenneth J. Vinci, who was its relationship manager with Leeb, wrote to Gorgia on April 4, 2005, requesting by April 15, 2005, a copy of Leeb’s operational procedures for low-priced securities transactions; a written outline of Leeb’s process of identifying transactions that may be part of a PIPE; Leeb’s due diligence process on such transactions; and how Leeb performed heightened scrutiny or due diligence on individuals or entities involved in the transactions. Tr. 109-10; Div. Ex. 18. Antworth does not recall that Pershing ever received the requested materials. Tr. 111.

On April 13, 2005, Antworth’s staff notified Leeb that Pershing had not received low-priced securities questionnaires for transactions in ten accounts and sought clarification of information it received in two questionnaires. Div. Ex. 20. Antworth stated in a follow-up email on the same day to Gorgia and Gayevsky that for seven accounts he had not received an explanation for the transactions, source of funds, relation between the seven accounts, and reason for the wires, and forwarded a new questionnaire. Tr. 111, Div. Ex. 20.

On May 9, 2005, Antworth notified Gorgia that Pershing would no longer allow Leeb customers to “journal shares of PIPE transactions between accounts.” Tr. 638. Additionally, Antworth told Gorgia, “we expect that your client will not be transferring the position (or a portion of the position) to another broker-dealer even as a first party transaction.” Tr. 112-13; Div. Ex. 26. Pershing did not object to journaling, which it defined as a book-keeping entry moving securities from one account to another, a legitimate practice similar to wiring money, but it was concerned that “securities were being journaled to third parties multiple times.” Tr. 115. Large blocks of funds were coming into an account, being sent to multiple unrelated accounts, and then being transferred out. Tr. 113-15. In AML parlance, multiple transactions for the purpose of hiding the source of the funds is called layering or structuring, and Pershing was concerned about transactions in Leeb accounts that involved the multiple movements of funds. Tr. 115-16.

On August 29, 2005, Antworth submitted a written report to Pershing’s Credit Committee noting two pages of concerns about Leeb. Tr. 49; (redacted). The fact that Antworth brought this matter to the Credit Committee, an occurrence that only happened a dozen times a year at most, indicated a high level of concern. Tr. 51. The report stated that year-to-date, Pershing Compliance had opened over forty AML cases involving Leeb, a large number for a small firm. Tr. 123. The

report noted Bloomfield's and Labi's heavy involvement with PIPE transactions and their record of past customer complaints. Tr. 50, 96; (redacted).

Pershing was concerned that low-priced securities were appropriately registered, if registration was required in order to be publicly traded and whether the issuers were controlled by persons with problematic backgrounds. Tr. 51. The report to Pershing's Credit Committee noted that Leeb had failed to respond to numerous low-priced securities questionnaires, and that Leeb lacked controls from a "know your customer" and AML perspective.<sup>14</sup> (redacted). (material omitted.)

Leeb failed to address Pershing's concerns in the first half of 2005, because it did not do due diligence on its customers and their transactions. Tr. 47. There is no evidence that Leeb used Pershing's AML systems and exceptions reports that noted red flags, including notice of payments sent to accounts in higher risk jurisdictions and intra-account activity that exceeded certain parameters that were available to Pershing customers. Tr. 41-43.

Santaniello and two other Pershing officials met with Miller, Gorgia, and Gayevsky at Leeb's New York office in September 2005 to put Leeb on notice of Pershing's concerns regarding Leeb's due diligence on accounts, its PIPE business, and Bloomfield's activities, his disciplinary history, and his supervision. Tr. 44-47, 54-56, 69, 856; Div. Ex. 44. Pershing had information about Bloomfield from subpoenas and regulatory inquiries. Div. Ex. 44. Leeb represented to Pershing that Bloomfield ran his own OSJ, and that he was responsible for supervising the accounts and the know your customer rule on his accounts. Tr. 56, 61; Div. Ex. 44. Santaniello concluded that Leeb did not exercise "a great deal of supervision related to [know your customer] KYC" on Bloomfield's accounts or Bloomfield. Div. Ex. 44. Pershing found Leeb ignorant about new regulations that covered producing branch managers, like Bloomfield. Tr. 62; Div. Ex. 44.

In 2006, Lifeline Bio issued 6.6 billion shares. Div. Ex. 358. The CJB Consulting and the Regis Filia accounts, both controlled by Alexander, obtained two billion shares, or 32 percent of the newly issued Lifeline Bio stock in private transactions. Tr. 230-33, 280, 624; Div. Ex. 358. The CJB Consulting and Regis Filla accounts delivered 998,550,000 of their two billion shares into their accounts at Leeb, accompanied with a certificate from a transfer agent, and they proceeded throughout 2006 to sell millions of shares out of their Leeb accounts. Tr. 233-36; Div. Ex. 358. Sales of Lifeline Bio shares from these two accounts in 2006, ranged between a low of 7 percent to a high of 15 percent of Lifeline Bio's total shares outstanding.<sup>15</sup> Div. Ex. 358.

There were at least sixteen occasions between June 2006 and January 12, 2007, when Leeb accounts engaged in cross trades, they bought and sold the same securities, at the same price, at the same time. Tr. 193-94; Div. Ex. 360 at A-P. On November 29, 2006, cross trades by the Valores

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<sup>14</sup> Many of the low-priced securities questionnaires that Leeb failed to return listed Stocker as counsel for the issuer. Ex. 42 (redacted).

<sup>15</sup> The calculation was done in ten rolling three month periods. Div. Ex. 358.

and OTC Services accounts in Equipment Systems shares accounted for most of the trading volume in the security. Tr. 201-02; Div. Ex. 360.

On December 13, 2005, Pershing notified Leeb that it was terminating their clearing agreement because of concerns over compliance and AML issues. Tr. 53, 57-58, 64, 861; Div. Ex. 60. Pursuant to contractual obligations, Pershing continued to clear for Leeb for 120 days and during this period Pershing continued to seek information from Gorgia and others at Leeb about suspicious transactions. Tr. 129-30; Div. Exs. 69, 80. On February 23, 2006, Pershing sought information from Gorgia and Gayevsky about Sieck and Warrior Capital. Div. Ex. 69. The inquiry noted that Pershing had not received information on Margenta, which had significant trading in a low-priced security. *Id.* On March 29, 2006, Pershing informed Leeb that it continued to receive large share positions of low-priced securities, one in a retirement account, and that its inquiries about this activity had gone unanswered. Div. Ex. 74. On April 5, 2006, Pershing notified Leeb that it found it necessary to impose limitations on its activities. Div. Ex. 77.

### **Commission Examination**<sup>16</sup>

On February 7, 2007, the Commission began a for-cause examination of Leeb's trading records for the period May through December 2006 to determine if Leeb played a role in facilitating the trading of issuers' shares on an unsolicited basis.<sup>17</sup> Tr. 265-66, 269; Gorgia Ex. 2-20 at 1. The examination report, dated September 28, 2007, found that "several apparent pump and dump schemes that had been facilitated by the use of brokerage accounts maintained at Leeb;" "Leeb may have violated Section 5 of the Securities Act by engaging in unregistered distributions of the common stock of various issuers that was sold through several customer accounts that it services, specifically, an account in the name of Thimble . . . and six related customer accounts which are controlled by [D. and J.] Uselton;" Leeb failed to make a reasonable inquiry to determine whether the principals of the accounts were in a control relationship with the issuer or whether they may be underwriters;" (material omitted). Tr. 294-95; (material omitted).

The examiners found extensive transactions in low-priced securities in the customer accounts of Bloomfield, Labi, and Martin. Tr. 265. Some of the securities had restrictive legends and some did not, but a legend does not determine whether a security is restricted, especially in obscure securities traded in the Pink Sheets. Tr. 267-68. Not much trading occurred in the Bloomfield and Martin accounts, rather large blocks of low-priced securities were transferred into the accounts and then sold. Tr. 266-67. Sixty-five percent of the commissions earned in Leeb's

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<sup>16</sup> Terrence P. Bohan was the branch chief on the examination, with examiners Lamore and Conwell. Tr. 284.

<sup>17</sup> The "unsolicited customer order" exemption, pursuant to Rule 15c2-11(f)(2) of the Securities Act, was intended to enable owners of obscure or inactive stock to find buyers, but the Commission's staff became concerned that the exemption was being abused as it "allows for the creation of a backdoor securities offering, where promoters can obtain a public shell company, issue stock and then provide a public market through an unsolicited customer order." Gorgia Ex. 2-20 at 1.

California office came from transactions in the Thimble account and six accounts controlled by the Useltons. Tr. 268-69. Typically, in 2005 through 2006, the Uselton accounts would receive large blocks of low-priced securities from many different issuers. Id. These securities had low sales volumes until they became the subjects of massive amounts of unsolicited email promoting the securities (Spam campaigns). Tr. 269. Shares in the Uselton accounts were sold shortly after they were received and the proceeds were wired out of the accounts. Tr. 268. The Thimble account routinely received large blocks of low-priced securities that had been the subject of Spam campaigns. Tr. 270. The account sold the securities quickly and wired the proceeds to a bank account in Liechtenstein, a money laundering haven. Tr. 270.

### **Carlos Pichardo**

Carlos Pichardo (Pichardo) was a consultant and an officer of INFE Ventures, Inc. (INFE Ventures) that supposedly provided advisory services to small companies on how to go public, via registration, reverse merger, or “directly to the Pink Sheets.”<sup>18</sup> Tr. 547-48, 554. According to Pichardo, the public can buy unregistered securities on the Pink Sheets. Tr. 562-63. Pichardo was reimbursed for his services by receiving shares in the companies that INFE Ventures worked with. Tr. 549.

Equipment Systems hired INFE Ventures for help going public. Tr. 553-54. Pichardo was charged with doing the due diligence.<sup>19</sup> Pichardo was President and co-owner of Dolphin Bay Capital (Dolphin Bay) and Gold Coast Capital (Gold Coast), companies that supposedly invested in companies with market capitalization of roughly \$50 million.<sup>20</sup> Tr. 550-51. Dolphin Bay and Gold Coast purchased over fourteen million shares of Equipment Systems in October 2004 with two promissory notes of \$465,000 each; however, neither Dolphin Bay nor Gold Coast had any capital. Tr. 555-59; Div. Exs. 206, 210, 221. Pichardo described an arrangement where funds to pay off the notes would be raised from accredited investors. Tr. 561. According to Pichardo, some payments were made, the notes were renegotiated and finally canceled in 2007, and shares were returned to the issuer. Tr. 573, 579-80.

Pichardo understood that the Equipment Systems shares were unrestricted and could be transferred freely. Tr. 557. He denied that he and Richfield planned to sell the fourteen million

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<sup>18</sup> Pichardo holds Bachelor’s and Master’s degrees in electrical engineering from Cornell University. Tr. 546. He has no security licenses and has not worked in the securities industry. Id. Pichardo was not a credible witness. He could not remember the meaning of the contract terms that he negotiated. Tr. 267-68.

<sup>19</sup> According to Pichardo, Equipment Systems was a legitimate company that provided water purification systems around the world and it had a solid business plan. Tr. 580-81. He does not see that he was involved in a scam, but rather the issue was only “spamming.” Tr. 582.

<sup>20</sup> The other co-owner of Dolphin Bay and Gold Coast was Tom Richfield (Richfield), now deceased, who owned INFE Ventures. Tr. 550-51; Div. Ex. 206. Both companies were incorporated in Texas in 2004 and ceased activity in 2007. Tr. 551-52. Stocker filed the incorporation papers. Tr. 552.

Equipment Systems shares to the public. Tr. 561. Stocker was the attorney who wrote the opinion letter, and he received shares as compensation. Tr. 557.

In October 2005, Pichardo negotiated a contract on behalf of Equipment Systems with Sieck, a customer of Martin, to promote Dolphin Bay and Gold Coast by initiating trading and working with market makers using emails and a website. Tr. 564-68; Div. Ex. 200. In the course of negotiations, Pichardo spoke with D. Uselton. Tr. 564. The contract was signed by Jose Masis, President, Equipment Systems, and D. Uselton, President, OTC Services. Div. Ex. 200. OTC Services performed promotional activities under the contract, including spam emails, and Gold Coast issued seven hundred thousand unrestricted shares in Equipment Systems to OTC Services for no other compensation. Tr. 569-71.

There was no promotional activity for Equipment Systems before October 2005. Tr. 571. In the first nine months of 2005, there were two transactions of ten thousand shares each. Div. Ex. 204. Between October 13, 2005, and December 30, 2005, there were transactions most days and Equipment Systems's price per share went from \$.05 to \$0.25. Id. Pichardo provided Sieck and D. Uselton with copies of Equipment Systems's press releases before they were publicly issued. Tr. 572.

On October 3, 2005, Pichardo sent D. Uselton two purchase agreements for a total of \$150,000 for 3,750,000 shares of Equipment Systems at \$0.04 per share. Tr. 574-75; Div. Ex. 222. Pichardo stated that he sent D. Uselton a "couple of certs to be transferred over to Valores, and then have the transfer agent mail them directly to you." Div. Ex. 222. Pichardo testified that Dolphin Bay and Gold Coast transferred 3,750,000 shares to Valores, an entity that OTC Services found. Tr. 575-76.

On December 1, 2006, Pichardo complained to Sieck and D. Uselton because Equipment Systems received "a ton of emails complaining about the spam and hundreds of calls with threats, etc." Tr. 576-78; Div. Ex. 223. The Pink Sheets stopped quoting Equipment Systems because of spam. Tr. 579.

### **David Laubach**

David Laubach (Laubach), a graduate of New York University, holds numerous security licenses and is a compliance officer at a securities firm. Tr. 1047-48. Laubach was employed at Leeb as an execution broker from October 2003 until January 2006. Tr. 1050, 1059. Laubach considered Gorgia's approach to compliance issues aggressive, and that most compliance requirements were overlooked when Gorgia was not on the premises. Tr. 1061-62. Gorgia told Laubach towards the end of 2005 that he tried unsuccessfully to close the California office, but Miller prevented him from doing so. Tr. 1080-81; Gorgia Ex. 2-14 at 43, 86.

### **Expert Testimony**

Robert W. Lowry (Lowry) testified as an expert concerning over-the-counter (OTC) market trading, market manipulation, sales of unregistered securities, supervision, and the broker-dealer's

duty in securities transactions.<sup>21</sup> Div. Ex. 1, Exs. A-D.<sup>22</sup> Lowry reviewed transactions in Leeb customer accounts to opine whether the circumstances raised red flags, which required Leeb to determine whether the securities were registered. Tr. 349. Lowry studied trading at Leeb from March 1, 2005 to June 22, 2007, during which time Leeb customers sold 4.16 billion shares and purchased 693.35 million shares. Div. Ex. 1 at 13, Ex. D. Seventy-five percent of the shares sold were priced at five dollars or less and more than sixty percent involved stocks priced at one dollar or less. Div. Ex. 1 at 5-6, 13.

According to Lowry, Leeb accepted delivery from customers of large blocks of shares into their accounts, and sold more than four billion shares in the OTC Pink Sheet market where trading is conducted under less stringent conditions.<sup>23</sup> Div. Ex. 1 at 5, 8. “Leeb’s role was to purchase the shares acquired by promoters and investor relations firms, and to provide the supply of shares to the market, rather than to its customers.” Div. Ex. 1 at 5.

Lowry testified that Leeb was required to investigate red flags, and when a customer delivered large quantities of obscure stocks into an account, Leeb was required to conduct a vigorous investigation into the circumstances of how the customer acquired the security, and the customer’s background and investment history, to assure that the transaction did not involve a seller who is an issuer, a person in a control relationship, or an underwriter. Tr. 363; Div. 1 at 28-29 citing Laser Arms Corp., Exchange Act Release No. 28878, 48 SEC Docket 292 (Feb. 14, 1991). Lowry opined that a broker-dealer must follow certain procedures when securities are deposited into customer accounts. Tr. 379-80. Lowry testified that, despite numerous red flags, Leeb did not make a reasonable inquiry into the circumstances regarding how customers who deposited large blocks of stock acquired the shares, and did not investigate the suspicious trading activity that occurred before and after the shares were delivered into Leeb accounts. Tr. 379, 404, 407; Div. Ex. 1 at 6, 18. Specifically, Leeb failed to inquire into the factors that determine whether unregistered securities can be sold to the public. Tr. 386-87. For example, Leeb failed to ask how long customers had owned the securities, how they were acquired and paid for, the nature of the

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<sup>21</sup> Lowry graduated from the University of Maryland with a major in Business Administration in 1976. Div. Ex. 1 at Ex. A. From 1972 to 1995, he was a senior accountant in the Commission’s Division of Market Regulation. Id. During his Commission career, Lowry conducted broker-dealer examinations. Id. Lowry became president of RL Consulting Services, Inc., in 1996. Id. He has consulted in over seven hundred matters, and has appeared in over thirty-five federal court actions.

<sup>22</sup> Exhibit A to Div. Ex. 1 is Lowry’s employment history; Exhibit B is a list of instances where he has testified or prepared an expert report; Exhibit C is a schedule showing the receipt of twenty-three securities into Leeb customer accounts and subsequent sales; and Exhibit D is material on twenty-five low priced securities held in Leeb accounts from 2005 through 2007. Tr. 344-46, 353-55, 409; Div. Ex. 1. Gorgia made several corrections to Lowry’s report and attachments, which Lowry acknowledged. Tr. 368-73, 389-390, 403.

<sup>23</sup> The OTC market is made up of broker-dealers who act as public market makers and who place bid and ask quotations on electronic networks, such as NASDAQ, the Over-the-Counter Bulletin Board or Pink Sheets. Div. Ex. 1 at 8.

acquisition, whether customers intended to sell additional shares, the customer's ownership as a percentage of the total outstanding shares, and previous market conditions for the securities. Div. Ex. 1 at 6-7.

Lowry found that from March 1, 2005 to June 22, 2007, the Thimble account received shares from sixty-eight different obscure issuers and sold 98.3 million shares for \$46.1 million, of which more than \$40 million was wired to Thimble bank accounts in Liechtenstein and the Cayman Islands. Tr. 392; Div. Ex. 1 at 15. Many of the securities deposited into the Thimble account had little or no trading history. Tr. 392; Div. Ex. 1, Ex. C. Accounts controlled by the Usetons received shares of 115 different issuers and sold 381.8 million shares for \$38.8 million. Div. Ex. 1 at 16.

From March 1, 2005 to June 22, 2007, Alexander, a Labi customer, controlled the CJB Consulting and Regis Filia accounts, where his daughter was the president, director, and shareholder. Tr. 667-68; Div. Exs. 1 at 16, 33, 54. These accounts sold 1.18 billion shares of fourteen issuers deposited into the accounts for \$1.37 million. Div. Ex. 1 at 17. Alexander placed all trades in the accounts, but the accounts contained no documentation authorizing discretionary trading. Div. Ex. 1 at 16.

L. Kaplan and T. Kaplan, clients of Labi, controlled the BMI Consulting, Inc. (BMI Consulting), DCF Group, and Corporate Architects accounts. Tr. 624-25, 669. From March 1, 2005 to June 22, 2007, shares of thirty issuers were deposited into these three accounts and they sold 94.2 million shares for \$3,503,057. Div. Ex. 1 at 17.

Dillow and Herbert, clients of Labi, controlled the Profit Capital, TJ Ventures, Revel Holdings, and Livestrong Ventures accounts at Leeb.<sup>24</sup> Tr. 625, 664-65. Shares of five issuers were deposited into these five accounts, and the accounts sold 126.7 million shares for \$827,119. Div. Ex. 1 at 17.

Lowry cites the following occurrences as red flags that Leeb failed to identify and properly evaluate.

1. **Equipment Systems:** In October 2005, OTC Services, an account the Usetons controlled, entered into a banking agreement with Equipment Systems pursuant to which OTC Services was to receive seven hundred thousand shares of Equipment Systems for "initiating trading activity in the stock and developing and initiating a public relations campaign."<sup>25</sup> Div. Ex. 1 at 19-20. OTC Services delivered seven hundred thousand shares of Equipment Systems into its Leeb account on November 4, 2005. Div. Ex. 1 at 19. Leeb did not fill out a low-priced securities questionnaire from Pershing asking for

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<sup>24</sup> Labi appears to have given investigative testimony that L. Kaplan controlled Corporate Architects and he testified that Dillow and Herbert controlled CMGI, Inc., also known as Corporate Architects. Tr. 625; Div. Ex. 1 at 17. The account opening documents for Profit Capital showed its occupation as Demand Creator. Tr. 662; Div. Ex. 9.

<sup>25</sup> These transactions were also described by Pichardo.

details surrounding delivery of the Equipment Systems shares into the OTC Services account. Div. Ex. 1 at 20.

Equipment Systems's shares were unregistered. Div. Ex. 1 at 20. In the three months prior to November 4, 2005, when the Equipment Systems shares were deposited into the OTC Services's account, Equipment Systems shares traded on only six days. Div. Ex. 1 at 20. Between October 19 and November 5, 2005, another Uselton-controlled account, Warrior Capital, purchased Equipment Systems on four of the six days the stock traded. Id. On those days, it accounted for either a third or a half of Equipment Systems's daily trading volume. Id. Between October 19 and November 5, 2005, the market price of Equipment Systems shares went from \$0.08 to \$0.21, an increase of 162 percent. Id. OTC Services sold all seven hundred thousand Equipment Systems shares by January 27, 2006. Div. Ex. 1 at 20.

Valores, another Uselton-controlled account, delivered 3,750,000 Equipment Systems shares into its Leeb account on October 25, 2006. Div. Ex. 1 at 21. In the prior ten months, the per share price declined from \$0.22 to \$0.053 on November 28, 2006; however, in three trading days from November 29 to December 1, 2006, the price increased from \$0.05 to \$0.10 per share. Id.

Accounts the Useltions controlled accounted for a substantial percentage of the Equipment Systems trading after November 7, 2006. Id. The OTC Services's account was responsible for 41 percent of the trading volume between November 7 and 21, 2006, and the OTC Services and Valores accounts were responsible for substantially all the trading volume in Equipment Systems on November 29 and 30, 2006. Id. Valores bought 35,100 shares and sold 210,000 shares on December 1, 2006, and sold over 4 million shares from December 4 to 8, 2006, at an average price of \$0.1457. Div. Ex. 1 at 21-22.

2. **CDIJ Developments:** On May 5, 2005, the Corporate Architects account was responsible for the entire trading volume in CDIJ Developments shares by purchasing thirty-five thousand shares for \$0.16 per share and selling seventy thousand shares for \$0.1107 per share. Tr. 674-75; Div. Ex. 1 at 22, Ex. D at 9. On May 6, 2005, the Corporate Architects account received five hundred thousand CDIJ Developments shares in the form of a stock certificate dated April 8, 2005.<sup>26</sup> Tr. 675-76; Div. Ex. 1 at 22, Ex. D at 9.

Dillow and Herbert controlled accounts that bought and sold CDIJ Developments shares after May 5, 2005, and the price increased throughout the month. Tr. 676-77; Div. Ex. 1, Ex. D at 9. The TJ Ventures account bought 122,400 shares between May 9 and May 17, 2005. Div. Ex. 1, Ex. D at 9. The Revel Holdings account purchased 48,300 shares between May 23 and June 1, 2005. Id. The Profit Capital account purchased 145,000 shares between June 8 and June 10, 2005. Id. On eight trading days between May 9 and

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<sup>26</sup> A newly issued share certificate is a significant red flag because an investor must satisfy a holding period before the security can be sold. Div. Ex. 1 at 29.

June 7, 2005, Corporate Architects sold 232,200 CDIJ Developments shares for proceeds of \$171,854. Div. Ex. 1 at 23. CDIJ Developments's per share price increased to \$3.70 on June 14, 2005. Div. Ex. 1 at 22. On the same day, thirty thousand shares sold for \$1.00 per share and the following day 22,400 shares sold for \$0.01. Div. Ex. 1, Ex. D at 10.

The Corporate Architects account sold 232,000 CDIJ Developments shares between May 9 and June 7, 2005, at \$0.74 per share and 257,800 shares on June 15, 2005, at \$0.01 per share. Div. Ex. 1 at 23. On June 7, 2005, the BMI Consulting account bought 12,700 and sold 12,700 shares of CDIJ Developments at the same price. Tr. 670; Div. 1, Ex. D at 10. The TJ Ventures and Profit Capital accounts sold a total of 121,700 shares for \$0.01 per share on June 15, 2005, so that on June 15, 2005, three Dillow-controlled accounts – Profit Capital, Corporate Architects, and TJ Ventures, sold a total of 379,500 shares of CDIJ Developments for \$0.01 per share. Div. Ex. 1 at 23. CDIJ Developments's per share price for purchases and sales tumbled and rocketed within days. It was \$3.70 on June 14, 2005, \$0.01 and \$1.03 on June 15, 2005, and \$2.03 on June 16, 2005. Div. Ex. 1, Ex. D at 10.

Labi testified that he did not ask Dillow and Herbert why they were executing the transactions and he did not realize that the transactions he was executing were a pump and dump scheme. Tr. 674-78.

3. **Golden Apple:** Trading in Golden Apple began on October 31, 2005, when CDIJ Developments changed its name to Golden Apple. Tr. 674; Div. Ex. 1 at 23.

Thimble purchased ten thousand shares of Golden Apple on January 6, 2006, for \$0.40 per share. Div. Ex. 1, Ex. D at 15. It sold ten thousand shares on January 17, 2006, for \$1.41 per share and it bought one thousand shares on January 25, 2010, for \$1.41. Id.

The records of West Coast Stock Transfer dated January 24, 2006, contain a statement by a director of Golden Apple authorizing the issuance of a total of five million shares, including 1.2 million shares to Thimble, stating that the shares are being issued to satisfy debt from January 2004.<sup>27</sup> Div. Ex. 164. However, Golden Apple's predecessor, CDIJ Developments was not incorporated until September 1, 2004, while Thimble was incorporated on September 5, 2005. Tr. 1386-88; Div. Exs. 43, 156.

Golden Apple's share price and volume began to increase on January 6, 2006, when the share price increased from \$0.21 to \$0.45, and the trading volume was 132,192. Div. Ex. 1 at 24. By January 18, 2006, the share price had increased to \$1.72 per share and trading volume was 1,416,373. Id.

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<sup>27</sup> The stock certificates for a total five million shares went to four recipients all at the same address: 1100 Melville Street, Vancouver, British Columbia, Canada, shared by Laidlaw, Corporate House, Thimble, and Hottentot. Tr. 1389; Div. Ex. 164.

The Thimble account received a total of 1,590,000 shares of Golden Apple on February 9 and 13, 2006, that included 1.2 million shares represented by a certificate dated February 6, 2005. Tr. 1371-72, 1378; Div. Ex. 1 at 23, Ex. D at 15. Bloomfield has no recollection about the stock and did not gather information required for a low-priced securities questionnaire when the shares were deposited because no one asked for one. Tr. 1373. Spam emails touting Golden Apple began on March 10, 2006. Tr. 1379; Div. Ex. 162. Between February 13, 2006 and May 26, 2006, Thimble sold 410,400 Golden Apple shares for an average of \$0.908 per share. Div. Ex. 1 at 24.

The Commission suspended trading in Golden Apple on April 7, 2006. Tr. 1393; Div. Ex. 1 at 24. Trading resumed on April 25, 2006, and the per share price dropped from \$1.07 on April 7, 2006, to \$0.45 on April 25, 2006. Div. Ex. 1 at 24. The suspension did not prompt Bloomfield to ask Golden Apple or Thimble for documentation to support the deposit of shares into the Thimble account. Tr. 1394.

Thimble sold 760,600 Golden Apple shares between August 8, 2006 and May 18, 2007, for an average of \$0.05 per share. Div. Ex. 1 at 24. In total, the Thimble account sold 1,171,000 Golden Apple shares and received proceeds of \$410,844. Id.

4. **Lifeline Bio:** Between August 12, 2005 and March 28, 2007, the Regis Filia and CJB Consulting accounts, controlled by Labi's customer Alexander, received more than one billion shares of Lifeline Bio. Div. Ex. 1 at 25.

On July 20, 2005, Pershing sent Gorgia a complaint against Stocker, who pled guilty on March 11, 2009, in the United States District Court for the Eastern District of Virginia, for participating in a pump and dump scheme. Id. Gorgia represented to Pershing that Leeb did not know of any account owners who dealt directly with Stocker; however, a June 24, 2005, low-priced securities questionnaire lists Stocker as company counsel for Spooz. Id. On June 22, 2006, Stocker issued an opinion letter regarding the issuance of fifty million Lifeline Bio shares to the CJB Consulting account. Id. Gorgia also erroneously told Pershing he would contact the account holders connected to Stocker, but he never did so. Tr. 829.

Lowry considers Gorgia's response to Pershing's inquiry unreasonable. Tr. 387-88. Pershing had raised a red flag about Stocker, and, in Lowry's opinion, Leeb should have reviewed the transaction involving Stocker and Leeb's customer, Alexander. Tr. 389.

Lifeline Bio's price ranged from \$0.00001 per share to \$0.018 between August 12, 2005 and March 28, 2007. Div. Ex. 1 at 25. Between August 12, 2005 and March 28, 2007, the Regis Filia and CJB Consulting accounts delivered into their accounts more than one billion Lifeline Bio shares. Id. The accounts did not buy any Lifeline Bio shares, but they sold 996,785,000 shares at an average price of \$0.0005 per share for proceeds of \$521,485. Div. Ex. 1 at 25-26.

5. **Aegis Assessments:** Two Labi customers received deposits of AGSI shares in four accounts, three of which were controlled by L. Kaplan, on December 12, 2005. Div. Ex. 1 at 26.

Labi knew in December 2005 that AGSI had retained an investor relations firm “connected” to L. Kaplan. Id. On February 27, 2006, L. Kaplan sent Labi messages that he was “leaving [Aegis Assessments] on for 3 more weeks,” and on March 2, 2006, that “700k worth of order coming in on [Aegis Assessments] over the next week campaign will start soon.” Div. Ex. 1 at 27.

Between December 12, 2005 and February 23, 2006, AGSI’s per share price fluctuated between \$0.16 and \$0.38 per share, closing on February 23, 2006, at \$0.30. Div. Ex. 1 at 26. Between March 3 and March 15, 2006, AGSI’s per share price fluctuated between \$0.43 and \$0.47, with a high on March 7, 2006, of \$0.53 when the volume was 1,504,663. Div. Ex. 1 at 27.

The BMI Consulting account sold 250,000 shares between March 8 and March 10, 2006, and received proceeds of \$99,325. Div. Ex. 1 at 27-28. The Corporate Architects’s account, controlled by L. Kaplan, sold 150,000 shares between March 17, 2006 and June 23, 2006, and received proceeds of \$33,006; and the DCF Group account, controlled by L. Kaplan, sold 250,000 shares between March 13, 2006 and June 26, 2006, and received proceeds of \$101,586. Div. Ex. 1 at 17, 27-28.

To make sure it is not accepting unregistered shares, a broker-dealer acting through its registered representatives must ask a customer such questions as: how and when did she acquire the shares, how did she pay for them, how many shares did she own, how many shares did she sell previously, and how many shares did she intend to purchase. Tr. 394. Lowry concluded that Leeb did not conduct a vigorous investigation or meaningful inquiry into how customers acquired low-priced securities, or the customer’s background and investment history, to make sure that transactions did not involve unregistered securities, issuers, or underwriters. Tr. 350-52, 379.

Lowry did not see any evidence that Leeb had supervisory procedures to assure compliance with the securities laws and to prevent the sale of unregistered securities that are not covered by an exemption. Tr. 349, 386-87. The compliance officer is responsible for establishing the necessary procedures and ensuring compliance. Tr. 384-86.

Lowry testified that Leeb was required to investigate red flags in order to reasonably supervise and that it failed to do so. Tr. 348-50. Leeb ignored that: its customers sold nearly five times as many shares as they purchased, which is a very unusual occurrence; sudden price increases occurred in dormant stocks after large blocks of shares were received into customer accounts; and accounts controlled by the same investors engaged in contemporaneous buying and selling. Tr. 347-49; Div. Ex. 1 at 28-29. Lowry faults Leeb for failing to investigate the following red flags:

Leeb customers sold securities of the following obscure, unknown entities: Equipment Systems, CDIJ Developments, Golden Apple, Lifeline Bio, and Aegis Assessments. Div.

Ex. 1 at 29. Most of these securities were represented by newly issued certificates, they were thinly traded and thus illiquid, some customers frequently received large blocks of these securities, and customers sold the securities almost immediately after they were delivered into their accounts. Div. Ex. 1 at 30. The length of the holding period often determines whether the customer can rely on an exemption from registration for a security. Id.

Related customer accounts were buying and selling shares of Equipment Systems on the same day, often an indicator of market manipulation, and these trades were a high percentage of total Equipment Systems trading volume. Div. Ex. 20-21, 29-30.

Leeb customers were active in the securities industry as promoters and investment bankers, and they required more scrutiny when delivering into their accounts and selling securities such as Equipment Systems, Golden Apple, Lifeline Bio, and Aegis Assessments, which they claimed were exempt from registration. Div. Ex. 1 at 30.

Leeb customers that received large deposits of Equipment Systems, Lifeline Bio, and Aegis Assessments had questionable histories, which required heightened scrutiny. Div. Ex. 1 at 31.

To prevent violations of the AML rules and the Patriot Act, Leeb needed to closely scrutinize customers that did business outside the United States, and those that had foreign banking relationships. Id.

One indication that a person is an underwriter is that the account only engages in selling, which is what happened with Lifeline Bio shares. Id.

About a year after receiving Pershing's warning about Stocker's credibility, Leeb accepted Stocker's opinion that the shares delivered into a customer's account could be issued without a restrictive legend. Div. Ex. 1 at 32.

Lowry also identified twenty-three securities received into Leeb customer accounts where it appears the securities were acquired from the issuer or a controlling person, or Leeb's records did not have sufficient information to determine if the customer was in a control relationship with the issuer. Tr. 354-55, 359-62; Div. Ex. 1 at 18-19, 359-62, Ex. C.

### **Record Certification**

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), I certify that the record includes the items set forth in the record index issued by the Secretary of the Commission on March 30, 2011.

### **Conclusions of Law**

The facts in this record describe the seamiest, corrupt side of the securities industry where greed and profit were the driving force. Respondents, including Miller, followed the motto, “the world moves on green,” as money was their prime concern. Tr. 1057-58. Based on my observation of the witnesses, no Respondent, including Miller, was entirely credible. The only bright spot in this sordid scenario is that another broker-dealer, Western, acted responsibly when it was faced with similar conduct by Bloomfield and Martin, then associated persons with the firm.<sup>28</sup>

The detailed recitation of a fact-intensive evidentiary record makes abundantly clear that the factual allegations in the OIP are all true. The expert’s conclusion is accurate, this large scale fraud with massive financial losses to members of the investing public happened because a broker-dealer did not exercise safeguards when accepting securities from customers where there were abundant red flags.

**Bloomfield, Labi, and Martin willfully violated Sections 5(a) and 5(c) of the Securities Act by selling unregistered securities to the public from early 2005 to the middle of 2007.**

Section 5(a) of the Securities Act makes it unlawful to use the means of interstate commerce or the mails to sell a security unless there is a registration statement in effect. Section 5(c) of the Securities Act makes it unlawful to use the means of interstate commerce or the mails to offer to sell or buy, unless a registration statement has been filed, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8. Stated simply, these sections of the Securities Act require “registration for *any* sale by *any* person of *any* security, unless it is specifically exempted from the registration provisions.” Thomas Lee Hazen and David L. Ratner, Securities Regulations in a Nutshell, § 10 (10th ed. 2009).

Scienter is not required for a violation of Sections 5(a) or 5(c). See SEC v. Softpoint, Inc., 958 F. Supp. 846, 859-60 (S.D.N.Y. 1997), aff’d mem., 159 F.3d 1348 (2d Cir. 1998). To make a prima facie case for a Section 5 violation, it is necessary to show: (1) no registration statement was filed with the Commission or was in effect; (2) the mail or a means of interstate commerce was used as a means to sell or to offer to sell or buy a security; and (3) persons made an offer to sell, sold, or

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<sup>28</sup> Craig Robert Watanabe (Watanabe), CCO at Western became concerned by various things that occurred in the Bloomfield and Martin accounts soon after they joined the firm in January 2004. Tr. 1722, 1736-37. Promoters often are paid in the issuer’s securities and he noted the high volume of penny stocks delivered into customer accounts, sales, and transfers of funds out of the accounts, a pattern fairly indicative of penny stock fraud. Tr. 1726-27, 1731. After a due diligence review, he concluded that many of entities that had corporate accounts had no business purpose and that the Useltons were behind most of the companies. Tr. 1730. Watanabe considered that the red flags demanded attention so he scrutinized every security that Bloomfield and Martin traded. Tr. 1733. He found one security where D. Uselton was the CEO, M. Uselton was the only market maker, and J. Uselton was placing buy orders in response to some selling. Tr. 1733-35. Watanabe considered that the facts had all the elements necessary for manipulation. Tr. 1734-35. He believed the firm could not allow this business and he froze activity in eight Bloomfield and Martin accounts just six months after they joined the firm. Tr. 1735-36. Watanabe, who was also COO, had the full support of Western’s CEO. Tr. 1736.

bought an unregistered security. SEC v. Cavanagh, 1 F. Supp. 2d 337, 361 (S.D.N.Y. 1998), *aff'd*, 155 F.3d 129 (2d Cir. 1998); SEC v. Montas, 464 F. Supp. 2d 772, 782 (S.D. Ind. 2006); SEC v. Cont'l Tobacco Co., 463 F.2d 137, 155 (5th Cir. 1972).

The Division has satisfied all three elements for establishing a *prima facie* case supporting violations of Sections 5(a) and 5(c) of the Securities Act. Most of the securities that Bloomfield, Labi, and Martin bought and sold for their customers were low-priced, unregistered securities, which were not covered by any exemption from registration: Adrenaline Nation; China Gold; Equipment Systems; Goldmark Industries; Golden Apple; iPackets; Lifeline Bio; LOM; Spooz; and Viyya did not file any registration statements with the Commission. Div. Ex. 312-321. Bloomfield, Labi, and Martin accomplished transactions for their customers using the mails and other means of interstate commerce.

If a *prima facie* case is established, it is incumbent on respondents to show that an exemption or safe-harbor from registration is applicable to them. See Ralston Purina Co., 346 U.S. 119, 126 (1953). Bloomfield and Martin argue that Section 4(4) of the Securities Act exempts “brokers’ transactions” executed on customer orders, such as occurred here, and that Securities Act Rule 144(g) provides that the term “brokers’ transaction” covers situations where the broker (1) does no more than executes orders to sell; (2) receives no more than the usual and customary broker’s commission; and (3) neither solicits nor arranges for the solicitation of customers’ orders to buy the security in anticipation of or in connection with the transaction. Bloomfield and Martin Post-Hearing Br. at 3.

Securities Act Rule 144(g)(4) specifies that “brokers’ transactions” include transactions where the broker:

After reasonable inquiry is not aware of circumstances indicating that the person for whose account the securities are sold is an underwriter with respect to the securities or that the transaction is a part of a distribution of securities of the issuer.

17 C.F.R. § 230.144(g)(4).

Bloomfield, Labi, and Martin are not covered by the “brokers’ transactions” exemption because they did not perform a reasonable inquiry to ascertain whether the customers for whom they sold securities were underwriters or that the sales were not part of a distribution of securities of the issuer. The latter appears to have been a real possibility as twenty-three of the securities in Leeb customer accounts appear to have been acquired from the issuer or a control person of the issuer: Adrenaline Nation, CDIJ Developments, China Gold, Equipment Systems, Golden Apple, Goldmark Industries, Heartland Energy, ID Global, Imperia Entertainment, Instarcare Corp., Index Oil Industries, iPackets, Lifeline Bio, LOM, Natural Harmony Food, Nanoforce, Spooz, Trendsetter, Veltex Corp., Viyya, and WMD Holdings. Tr. 359-62; Div. Ex. 1 at 18-19, Ex. C.

The case law on this issue is clear:

[the brokers’ transactions] exemption – which is designed to exempt ordinary brokerage transactions – is not available to a registered representative if he knows or

has reasonable grounds to believe that the selling customer's part of the transaction is not exempt from Section 5 of the Securities Act. In that event, the registered representative likewise violates Section 5 of the Securities Act by virtue of participating in a nonexempt transaction. The amount of inquiry required of the broker necessarily varies with the circumstances of each case; however, "when a dealer is offered a substantial block of a little-known security . . . where the surrounding circumstances raise a question as to whether or not the ostensible sellers may be merely intermediaries for controlling persons or statutory underwriters then searching inquiry is called for."

John A. Carley, 92 SEC Docket 1693, 1707 (Jan. 31, 2008) (citing Distribution by Broker-Dealers of Unregistered Securities, Securities Act Release No. 4445 (Feb. 2, 1962) (quoting SEC v. Culpepper, 270 F.2d 241, 251 (2d Cir. 1959))).

Respondents were not neophytes to the securities industry. Bloomfield, who has an MBA and who was a Series 24 OSJ supervisor, had worked in the securities industry for thirty-four years, with twenty-one years as a supervisor. Answer at 1; Tr. 310. Martin has a Bachelor's degree and eighteen years of securities experience. Labi, had three years of college and thirteen years of experience as a registered representative. The facts surrounding the transactions would have put a reasonable broker on notice, as it did Pershing, that sales of these securities were suspect. Most of the securities were low-priced securities; many of the persons controlling the accounts in which the transactions occurred had dubious reputations;<sup>29</sup> many of the customers controlled several accounts for no apparent business reason; the sales occurred frequently just days after the securities were deposited in the accounts; most of the customers were engaged in promotional activities for the issuers and were compensated in shares; many transactions involved large sums moved to accounts in international locations known to shield information from regulators; many transactions occurred between accounts controlled by related persons; the volatility in the share prices and trading volumes were unusual; and Pershing sent many requests for basic information about many transactions, delivered written and oral cautions to Leeb, and ended its clearing relationship with Leeb because of legitimacy concerns.

The overwhelming evidence is that Martin and Bloomfield did not do due diligence on the low-priced securities received into customer accounts. Tr. 276. They did not have procedures in place for determining the source of low-priced securities and they did not inquire into the circumstances of where and how customers obtained them. Tr. 273-74, 276. The record does not

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<sup>29</sup> The Useltons status is described in an earlier footnote. However, if the Commission did not prohibit the Useltons from doing business, Bloomfield saw no reason not to open accounts for them. Tr. 1027, 1034, 1437. SEC v. Uselton, No. 07-cv-2211 (S.D. Tex. 2007); SEC v. Alexander, No. 09-cv-805 (N.D. Ga. 2009); Gerald P. Alexander, A.P. 3-13753 (Mar. 26, 2010); United States v. Stocker, 09-cv-118 (E.D. Va. 2009). Div. Exs. 368-86. Bloomfield's attitude toward Soloski was similar. Tr. 819, 1342. Bloomfield did not introduce any evidence to support his position that he did not put customers with histories of regulatory violations on heightened scrutiny because he already had them under the highest scrutiny possible. Tr. 1432-33.

support most of Bloomfield's factual assertions: every certificate the California office received was either free-trading or the necessary Rule 144 paperwork was produced before a sale took place; he and Martin did all that they could do make a reasonable inquiry as to whether the shares were free trading; about thirty percent of the time, he and Martin would ask customers to provide information on how they acquired the shares; when a certificate did not bear a restrictive legend, it was a pretty sure bet that the shares were freely tradable; ninety-nine percent of the time a transfer agent does not transfer restricted securities; and the certificates for restricted securities almost always bear a restrictive legend. Tr. 1192-95, 1428.

Respondents' defense that they relied on the face of the security to determine whether it was restricted or that the software program they used did not show that the securities were restricted is invalid and unpersuasive. The testimony from an expert and from others affirmed that a broker-dealer cannot determine whether a stock is restricted by only looking to see if the face of the certificate contains a restrictive legend; it is common for shares that are restricted not to be marked restricted. Tr. 267-68, 296-98, 383, 394, 396-401. A broker-dealer must investigate whether the securities are restricted, whether or not they bear a restrictive legend. Tr. 401, 407-08.

Bloomfield brazenly defends his conduct when the overwhelming evidence is that he did no due diligence as to the new customer accounts he opened, or as to the free trading status of the securities in transactions that he and Martin engaged in for customers. The fact that Pershing questioned Bloomfield's activities and (material omitted), where he was in charge and was Martin's supervisor, gave him no pause.

Commission examiners saw IMs that appeared to indicate certain people informed Labi of pending promotions related to low-priced securities. Tr.281-82. The IMs show Labi was aware of, and a party to, activities by his customers to create artificial demand for securities that would raise the per share price. Labi was a willing participant in what he knew, or should have known, was a pump and dump scheme by his customers.

Martin knew some of his customers received shares in return for providing financing to issuers, which makes his position that he was not required to "investigate" the source of his customers' shares and that he made a reasonable inquiry by simply asking his customers questions especially unacceptable. Tr. 273, 278, 1459. The Commission has held that it is not enough for a broker-dealer to rely on unverified customer representations to determine whether it is lawful to sell unregistered securities. Div. Ex. 1 at 28 citing Laser Arms Corp., 48 SEC Docket at 309-10.

Furthermore, Martin's belief that common sense supports not making a record of information he received is illogical. Tr. 1454-59. Martin did not ask for any kind of documentation – subscription agreements, private placement memoranda, contracts that reflect services a customer provided, transfer papers, or papers supporting issuance of certificates - from his customers. Tr. 1472. It is nonsensical for Martin, a registered representative associated with a broker-dealer, to claim that he did not have a duty to investigate the source of shares his customers deposited and then sold to the public out of their accounts. Tr. 1471. See Laser Arms Corp., 48 SEC Docket 292.

The Division's detailed evidentiary presentation, set out in the Facts, establishes without any doubt that Bloomfield, Martin, and Labi willfully violated Sections 5(a) and 5(c) of the Securities

Act because, using the instruments of the mails and interstate commerce, they willfully bought and sold unregistered securities that were not exempt from registration to the public.<sup>30</sup>

**Gorgia failed reasonably to supervise Bloomfield, Labi, and Martin within the meaning of Sections 15(b)(4) and 15(b)(6) of the Exchange Act, with a view to preventing and detecting violations of Section 5 of the Securities Act.**

Section 15(b)(6) of the Exchange Act authorizes the Commission to take action against any person who has committed or omitted any act enumerated in Section 15(b)(4)(E) who, at the time of the misconduct, was associated with a broker or dealer or was participating in a penny stock transaction.

Section 15(b)(4)(E) prohibits, among other things, a failure “reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such person is subject to his supervision.” No person shall be deemed to have failed reasonably to supervise, any other person, if: (1) there are established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person; and (2) a person has reasonably discharged his duties and obligations without reasonable cause to believe that the established procedures and system were not being complied with.

The Commission has held when addressing Section 15(b)(6) of the Exchange Act, incorporating by reference Section 15(b)(4)(E):

The supervisor may establish an affirmative defense if the supervisor can show procedures established by the broker-dealer with whom she was associated at the time of the violations at issue. Supervisors must respond not only when they are “explicitly informed of an illegal act” but also when they are “aware only of ‘red flags’ or ‘suggestions’ of irregularity.”

Donna N. Morehead, 77 SEC Docket 3388, 3392 (June 26, 2002) (quoting John H. Gutfreund, 51 S.E.C. 93 (1992)). See also George J. Kolar, 77 SEC Docket 3400, 3405 (June 26, 2002); Consol. Inv. Servs., Inc., 52 S.E.C. 582, 588 & n.27 (1996) and (collecting cases); Quest Capital Strategies, Inc., 76 SEC Docket 131 (Oct. 15, 2001).

Leeb’s SPM did not contain any operational procedures for transactions involving low-priced securities, and it was not revised in 2005 to reflect the California office that opened in July 2005. Tr. 806, 940. Leeb’s supervisory procedures did not specify how reviews of the California office were to be conducted, or how the quarterly audits that Gorgia represented to FINRA would occur. Tr. 794-97, 910, 940; Div. Ex. 17. The safe harbor provision in the statute does not apply because Leeb did not have any “established procedures in place and a system for applying them,

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<sup>30</sup> The accepted definition of “willful” is “intentionally committing the act which constitutes the violation.” Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (citations omitted); Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965).

which reasonably could be expected to prevent and detect violations,” and, even if it did, Gorgia knew that compliance at Leeb was non-existent. Exchange Act, Section 15(b)(4)(E).

Gorgia argues that he was not in the direct supervisory chain, that he did not have the ability to control the actions of Bloomfield, Labi, and Martin, and that he made a “tremendous effort over time to address the relevant issues but ultimately had no choice to leave the firm as it became apparent that none of his demands or suggestions would be implemented.” Gorgia Post-Hearing Br. at 5. Miller is of a different view. He testified that Gorgia left Leeb after Miller discovered that Gorgia had put himself and his family on Leeb’s health care plan without informing Miller. Tr. 444. According to Miller, Gorgia reimbursed Leeb for more than half the amount of unauthorized expenses discovered after he left the firm. Tr. 447-48. Tom Poss (Poss), who succeeded Gorgia as CCO, characterized Gorgia as a thief.<sup>31</sup> Tr. 1136. Poss testified, “The guy who had been in my position before [Gorgia] had completely neglected the compliance aspect of things” and had done no monitoring. Tr. 1133-34; Div. Ex. 14 at 43, 86.

Poss did not consider himself a supervisor. Tr. 1105. I find that Gorgia was a supervisor in that Leeb’s SPM names CCO Gorgia as supervisor in numerous sections;<sup>32</sup> Leeb was a small company and Gorgia held several titles – Financial Principal, CFO, CCO, and AML officer; Gorgia was in charge of Leeb’s supervisory system; he believed he had authority to terminate Bloomfield; and he took pride in describing himself at Leeb as the new sheriff in town. Tr. 438, 441, 852; Div. Ex. 17.

The Commission examiners noted several emails where Gorgia addressed with Miller concerns about Bloomfield, but that attempts to rein in Bloomfield were unsuccessful.<sup>33</sup> Tr. 309; Gorgia Ex. 2-20 at 37. Miller, on the other hand, testified that Gorgia never told him that he was concerned that Bloomfield, Labi, and Martin were not performing a reasonable inquiry on penny stocks being deposited into their customers’ accounts. Tr. 431. Gorgia testified he was concerned at Labi’s failure to submit the low-priced securities questionnaires, but he cannot recall that he took any action. Tr. 863-64. Labi did not know that Gorgia was Leeb’s AML officer. Tr. 629. I accept the Commission examiner’s account as accurate; however, those emails are not in evidence and there is nothing in this record, except Gorgia’s testimony and his representations to Laubach that shows Gorgia took any action, or even argued forcefully to bring Bloomfield, Labi, or Martin into compliance. The evidence shows just the opposite.

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<sup>31</sup> Poss, a graduate of Fairfield University and Financial Principal for the Aegis Capital Corporation, was Leeb’s full time CCO, chief financial officer, and AML officer from July 15, 2006 to February 2007. Tr. 1084, 1088-89, 1112.

<sup>32</sup> This is only a partial list. Section 2.4 Assigned Areas of Supervision shows Gorgia with seven areas; Section 3.1 Supervisory System; Section 3.2 Supervisory Control System; Section 3.2.1 Review of Producing Managers; Section 6.1 FIRM POLICY on Outside Business Activities and Private Securities Transactions (“Selling Away”); Section 17.1 Principal Responsibilities; Section 17.4 Annual Financial Audit; Section 17.8 Record of Written Complaints; Section 17.11 Privacy of Consumer Financial Information. Div. Ex. 17 at 16-17, 19, 21, 23, 231, 233, 237.

<sup>33</sup> The examiners also noted that Gorgia ignored the red flags described in their report. Gorgia Ex. 2-20 at 37.

Based on my observation of the witness and the evidence, Gorgia has no credibility. In an April 2005 letter to FINRA supporting Leeb's application to operate the California office, Gorgia represented that Leeb's participation in PIPEs as limited to relationships with "existing individuals (known to [Leeb] cleared through FinCEN, sophisticated investors and qualified accredited investors under the rules and regulations of the NASD)." Tr. 814-15; Div. Ex. 22. Martin and Bloomfield had not done an investigation establishing that their customers met these criteria, and Gorgia did not make inquiries of Bloomfield and Martin's former employer; he knew that Pershing had closed five or six customer accounts in the California office, (material omitted), but he did not bring these facts to FINRA's attention. Tr. (material omitted), 818-19, (material omitted), 827-28.

Gorgia erroneously represented to FINRA that Leeb "demands that the private placement memorandum, allocation authorizations, low-priced securities questionnaires for each and every deal be presented." Tr. 823, 825; Div. Ex. 22. He knew this was false. Still further, in July 2005, Gorgia represented to FINRA that he would not permit the slightest deviation from compliance; but he did nothing, in fact, (material omitted). Gorgia testified that he did not disclose his concerns about the California office to FINRA, which was auditing the office in December 2005, because he is not a whistleblower. Tr. 867; Div. Ex. 61.

In December 2005, when it became obvious that Pershing was ending its clearing relationship with Leeb, Gorgia solicited a new clearing firm by falsely representing that Leeb had hands-on management of finance, trading, and compliance. Div. Ex. 62. Gorgia falsely represented to FINRA in February 2006 that he was updating Leeb's supervisory procedures. Tr. 940-41; Div. Ex. 91. Gorgia admittedly did not review the monthly activity in customer accounts, which he acknowledged meant that Leeb's supervisory procedures were flawed. Tr. 898-99.

The AML audits that Gorgia arranged for in 2005 and 2006 were shams that failed to note any AML issues (material omitted). Gorgia's representation to the Leeb Board in August 2005 that compliance exposure was reduced because of his activities has no basis in fact.

Gorgia received innumerable emails from Pershing asking for information about transactions and (material omitted). Not all the information requests were filled out and returned, and, when they were, the information was insufficient. Moreover, when it did complete a low-priced securities questionnaire, Leeb relied on unverified information provided on behalf of the customer and it did not do an independent investigation. Div. Ex. 1 at 18. (material omitted)

Gorgia emailed Bloomfield the following on April 27, 2006:

[L]et me set one thing straight with you and Jack [Martin]. Your operation has been burdensome for New York since day one. You are unable to take care of what is normally taken care of at an OSJ. . . . Yesterday you sold 3,900,000 shares of RMDG at LESS THAN A PENNY A SHARE. Going forward, I am stating that no transactions will occur at less than a penny. . . . If you think these actions do not concern people then you are grossly mistaken.

Div. Ex. 82. Leeb's sub-penny trades did not decrease following Gorgia's email and Gorgia did not issue any directive prohibiting them. Tr. 313-14, 887-88; Div. Ex. 359.

Pershing sent emails, and even had top officials visit Leeb, an unusual occurrence, and still Gorgia did not act to end the illegal behavior of Bloomfield, Labi, and Martin. In April 2006, Pershing closed two California office accounts for lack of "PIPE Questionnaires." Div. Ex. 79. The files of the California office did not contain many completed low-priced securities questionnaires. Tr. 275-76. (material omitted) Nothing in the record indicates that Respondents attempted to hide their conduct from Gorgia or anyone else at Leeb. Labi sat at a trading desk along with Miller and others. The numerous red flags that raised suspicions about transactions in Bloomfield, Labi, and Martin customer accounts included the following: (1) customers who were known promoters and who received securities as payment; (2) customers who had dubious reputations and regulatory histories; (3) the lack of information called for by low-priced securities questionnaires; and (4) wire transfers of large sums to customer accounts in Liechtenstein and the Cayman Islands. Gorgia raised no questions about the transfers even though a Leeb AML Compliance Program that he drafted, included material that showed Liechtenstein as a non-transparent, uncooperative tax haven. Div. Ex. 92 at 18.

(material omitted) As Leeb's CCO, Gorgia would have been aware of the circumstances and failed to remedy them.

Gorgia failed to do so many things required of a CCO, and he ignored many direct warnings and red flags of illegal activities. The overwhelming evidence is that Gorgia failed reasonably to supervise Bloomfield, Labi, and Martin within the meaning of Sections 15(b)(4) and 15(b)(6) of the Exchange Act, with a view to preventing and detecting violations of Section 5 of the Securities Act.

**Bloomfield, Gorgia, Labi, and Martin willfully aided and abetted and caused Leeb's violations of Section 17(a) of the Exchange Act and Exchange Act Rule 17a-8.**

Section 17(a) of the Exchange Act provides that every broker or dealer who conducts business on a national exchange shall make and keep for prescribed periods such records, and make and disseminate such reports, as the Commission may require. Exchange Act Rule 17a-8, Financial Recordkeeping and Reporting of Currency and Foreign Transactions, requires registered brokers and dealers subject to the Currency and Foreign Transactions Reporting Act of 1970 to comply with the reporting, recordkeeping, and record retention requirements of Part 103 of Title 31 of the Code of Federal Regulations (C.F.R.). A portion of the C.F.R. titled, Reports by Brokers or Dealers in Securities of Suspicious Transactions, requires that broker-dealers file SARs with the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN). A broker-dealer is required to file a SAR if it learns of a transaction, or a pattern of transactions, involving or aggregating at least \$5,000, and it knows or suspects that the transaction, or pattern of transactions:

- (1) involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds, or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation; (2) is

designed, whether through structuring or other means, to evade any requirements of . . . the Bank Secrecy Act . . . ; (3) has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or (4) involves use of the broker-dealer to facilitate criminal activity.

31 C.F.R. § 1023.320.

For “causing” liability, three elements must be established: (1) a primary violation; (2) an act or omission by the respondent that was a cause of the violation; and (3) the respondent knew or should have known, that his conduct would contribute to the violation. Robert M. Fuller, 56 S.E.C. 976, 984 (2003), petition denied, 95 Fed. Appx. 361 (D.C. Cir. 2004). A respondent who willfully aids and abets a violation also is a cause of the violation under the federal securities laws. See Sharon M. Graham, 53 S.E.C. 1072, 1085 n.35 (1998), aff’d 222 F.3d 994 (D.C. Cir. 2000).

The evidence is persuasive that Leeb violated Section 17(a) of the Exchange Act and Exchange Act Rule 17a-8 (material omitted). In the months of December 2005 through April 2006, between twenty and forty percent of the clearing requests that originated in Leeb’s California office raised red flags at Pershing. Tr. 130-33; Div. Ex. 65. Pershing ended its clearing relationship with Leeb because of compliance and AML concerns.

Having found a primary violation, the issue becomes whether the conduct of Bloomfield, Gorgia, Labi, and Martin was a cause of the violation, and whether they knew, or should have known, that their conduct would contribute to Leeb’s violation. The answers to both questions are yes. The numerous red flags that alarmed Pershing and caused it to end its clearing relationship with Leeb, show multiple transactions in Leeb’s New York and California offices that were suspicious. As Leeb’s AML officer in the New York office, Gorgia was responsible for filing SARs about suspicious transactions that occurred in the customer accounts of Labi. Bloomfield, as the AML officer for the California office, was responsible for filing SARs for suspicious transactions that occurred in the customer accounts of Martin. By their actions and inactions, Bloomfield, Gorgia, Labi, and Martin willfully aided, abetted, and caused Leeb’s violations of Section 17(a) of the Exchange Act and Exchange Act Rule 17a-8. Respondents, by their education and extensive industry experience, knew, or should have known, that their conduct would contribute to Leeb’s violations of the statute and regulations (material omitted).

### **Sanctions**

The Division recommends that: (1) Bloomfield, Gorgia, Labi, and Martin be barred from association with any broker or dealer and from participating in any offering of penny stock, pursuant to Section 15(b) of the Exchange Act. If Gorgia is not barred from association, the Division recommends that, alternatively, he should be barred from association in a supervisory capacity; (2) Bloomfield, Gorgia, Labi, and Martin be ordered to cease and desist from committing or causing any future violations; (3) Bloomfield and Martin should each be ordered to disgorge all commissions from sales of certain penny stocks between October 1, 2005 and June 1, 2007, and Labi should be ordered to disgorge all commissions from sales of certain stocks from April 1, 2005

through April 12, 2007, plus prejudgment interest; and (4) Bloomfield, Gorgia, Labi, and Martin be ordered to pay a third tier civil penalty. Div. Post-Hearing Br. at 22-30; Div. Reply Br. at 19-21.

Bloomfield and Martin call for dismissal of the allegations. Bloomfield and Martin Post-Hearing Br. at 6, 32. Gorgia maintains that he was not malfeasant or negligent in his position at Leeb and recommends that that he be acquitted of all the allegations. Gorgia Post-Hearing Br. at 58.

### **Bar from Association**

Section 15(b)(6)(A) of the Exchange Act states:

With respect to any person who is associated . . . at the time of the alleged misconduct, . . . with a broker or dealer . . . the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a broker or dealer, . . if the Commission finds . . . that such censure, placing of limitations, suspension, or bar is in the public interest and that such person--

. . .

[from subparagraph D of paragraph (4)] Has willfully violated any provision of the Securities Act of 1933, . . . [the Exchange Act], the rules or regulation under any of such statutes . . . .

Respondents committed willful violations of the Securities Act, and willfully aided, abetted and caused violations of the Exchange Act so it is necessary to examine the criteria for making public interest determinations:

[t]he egregiousness of the [respondent's] actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the [respondent's] assurances against future violations, the [respondent's] recognition of the wrongful nature of his conduct, and the likelihood that the [respondent's] occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); see also Joseph J. Barbato, 53 S.E.C. 1259, 1282 n.31 (1999); Donald T. Sheldon, 51 S.E.C. 59, 86 (1992), aff'd, 45 F.3d 1515 (11th Cir. 1995). Deterrence is also a factor to be considered. See McCarthy v. SEC, 406 F.3d 179, 189 (2d Cir. 2005.)

The violations of Bloomfield, Gorgia, Labi, and Martin were egregious because they were blatant and contrary to unambiguous, basic provisions of the securities laws that continued, at a minimum, from July 2005 to May 2007. Respondents have offered denials and excuses, but have not recognized publicly that their conduct was wrong and have given no assurances that they will not commit similar acts in the future. Given that Respondents have spent a significant amount of their working life in the securities industry and appear to have done well financially, it

is reasonable to assume that, if allowed the opportunity, they would resume their activities. This record indicates that their participation would be a threat to the investing public because they cannot be trusted. For all these reasons, Respondents should be barred from association with a broker-dealer and from participating in penny stock offerings, pursuant to Section 15(b) of the Exchange Act.

### **Order to Cease and Desist**

Section 8A of the Securities Act and Section 21C of the Exchange Act authorize the Commission to order a person, who has committed a violation, to cease and desist from committing or causing such violation and any future violation of the same provision or regulation. The Commission has found the Steadman factors and the following additional considerations relevant for determining whether a cease-and-desist order is appropriate:

whether the violation is recent, the degree of harm to investors or to the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings.

KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1192 (2001), reconsideration denied, 55 S.E.C. 1 (2001), petition denied, 289 F.3d 109 (D.C. Cir. 2002).

As noted, Respondents' actions resulted in sales of some \$85 million in the Thimble and Uselton controlled accounts in Leeb's California office. As Labi acknowledged, his IMs indicate that his customers engaged in pump and dump schemes to their financial benefit.

Labi has been unable to find employment, but Bloomfield, Gorgia, and Martin continue to work in the securities industry. Tr. 956. Since July 2006, Gorgia has been affiliated with a securities firm and, in addition, is chief compliance officer of its affiliate. Tr. 951-56.

After Leeb closed, Bloomfield and Martin worked at National Securities. Tr. 1175. They both joined AIS Financial Inc. (AIS), a registered broker-dealer, in August 2006. Tr. 1163-64, 1673. Bloomfield became president of AIS when its majority owner and former president was indicted in May 2009 for one count of conspiracy to commit securities fraud, one count of conspiracy to commit money laundering, and one count of money laundering, in what was described as a pump and dump scheme. Tr. 1165-68; Div. Ex. 405. This individual, who owns seventy-six percent of AIS, while Martin and Bloomfield each own twelve percent, was also the subject of an enforcement action brought by the Commission in the United States District Court in Delaware in May 2009, and an outstanding FINRA action. Tr. 1169-74.

The Steadman factors and the many millions that Respondents enabled their customers to earn by selling unregistered securities to investors, dictate that an order to cease and desist, a forward looking admonition, is called for as to Bloomfield, Gorgia, Labi, and Martin. Respondents acted deliberately in a way that they either knew, or should have known, was unlawful. Their motive was personal financial gain and their actions continued for substantial periods. There are no mitigating factors.

## **Disgorgement**

Section 8A(E) of the Securities Act and Section 21C(e) of the Exchange Act authorize the Commission to order disgorgement in a cease-and-desist proceeding. Disgorgement is defined as the return of ill-gotten gains for the purpose of making illegal activity unprofitable. See SEC v. Manor Nursing Ctrs. Inc., 458 F.2d 1082, 1104 (2d Cir. 1972). The case law supports the proposition that disgorgement needs to be a reasonable approximation of profits causally connected to the violations. See SEC v. First City Fin. Corp., 890 F.2d 1215, 1231 (D.C. Cir. 1989); SEC v. First Jersey Secs., Inc., 101 F.3d 1450, 1475 (2d Cir. 1996).

Rule 630(a) and (b) of the Commission's Rules of Practice provide:

The Commission may, in its discretion, or the hearing officer may, in his or her discretion, consider evidence concerning ability to pay in determining whether disgorgement, interest or penalty is in the public interest.

...

Any respondent who asserts an inability to pay disgorgement, interest or penalties may be required to file a sworn financial disclosure statement and to keep the statement current.

Gorgia and Labi submitted financial information under seal pursuant to Rule of Practice 630. Gorgia Ex. 400 (under seal); Labi Ex. 1 (under seal).

The Division calculated that from October 1, 2005 to June 1, 2007, Bloomfield earned \$272,342 and Martin earned \$964,868 from transactions in about seven accounts that traded in unregistered securities. Tr. 1424; Div. Ex. 361. The Division's calculations include all trades in the accounts, not just the securities mentioned in this Initial Decision. The Division contends that because Martin and Bloomfield should not have opened these accounts, all the transactions in the accounts resulted in ill gotten gains to these Respondents. Tr. 1425. The Division also calculated that from April 1, 2005 through April 12, 2007, Labi earned commissions of \$152,483 from transactions in ten accounts that traded in unregistered securities. Div. Ex. 362. Bloomfield, on the other hand, estimates that he earned \$16,027 on the buy side and \$134,090 on the sell side of transactions in the nine securities named in the OIP. Tr. 1415-18; Bloomfield Ex. 1.

Respondents should not be permitted to gain from blatantly illegal conduct that breached the basic level of honesty expected from securities professionals. "The effective enforcement of the federal securities laws requires that the SEC be able to make violations unprofitable. The deterrent effect of an SEC enforcement would be greatly undermined if securities law violators were not required to disgorge illicit profits." Manor Nursing Ctrs., 458 F.2d at 1104. The Division's calculations as to Bloomfield, Labi, and Martin appear to be a reasonable approximation, and I accept its position that the disgorgement amount should include all transactions that went through the accounts. Accordingly, I accept the Division's recommendation on the disgorgement amount and will order prejudgment interest from June 1, 2007, as to Bloomfield and Martin because they

left Leeb in May 2007, and from May 1, 2007 for Labi because he left Leeb in April 2007. Bloomfield and Martin Answer at 12, Labi Answer at 1.

By not submitting supporting information under Commission Rule of Practice 630, Bloomfield and Labi have forfeited their right to argue that they are financially unable to pay disgorgement, interest, or civil penalties if ordered to do so. See Terry T. Steen, 53 S.E.C. 618, 627-28 (1998). Based on my observation of the witness and the evidence, Labi's representations on his financial status are suspect because he has no credibility. Even so, inability to pay is but one factor to be considered in assessing whether a respondent should be required to pay disgorgement, interest, or civil penalties. See Thomas C. Bridge, 96 S.E.C. Docket 2485 (2009).

### **Civil Penalties**

Section 21B(a) of the Exchange Act authorizes the Commission to impose civil money penalties in a proceeding instituted pursuant to Section 15(b) of the Exchange Act. The statute sets out a three-tiered system for determining the maximum civil penalty for each "act or omission." See Mark David Anderson, 56 S.E.C. 840, 863 (2003) (imposing a civil penalty for each of the respondent's ninety-six violations). A second-tier penalty is permissible if the violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; a third-tier penalty is permissible for violations that, in addition, "directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission." Exchange Act, Section 21B(b).

Section 21B(c) of the Exchange Act specifies the following as public interest considerations: (1) whether the violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) harm caused to others; (3) unjust enrichment; (4) prior violations; (5) deterrence; and (6) such other matters as justice may require.

It is significant that Respondents ignored the clearing broker's numerous efforts to change their conduct, that each Respondent was not a credible witness, and that the Commission should use its powers to deter violations. Bloomfield, Gorgia, Labi, and Martin acted with deliberate or reckless disregard for regulatory requirements, they harmed many unknown investors, and they unjustly enriched themselves and others. Bloomfield, Labi, and Martin have committed prior violations. Given all these factors, and considering the record as a whole, I find that third tier civil penalties, where the maximum amount for each act or omission is \$130,000 for a natural person, should be assessed against each Respondent. I reject Labi's and Gorgia's representations that they are financially unable to pay a civil penalty. Gorgia's testimony on his expenses raises serious questions. As noted, financial ability is only one factor in determining whether a penalty should be assessed.

### **Orders**

I REJECT Gorgia's requests that I add a page to Division Exhibit 67, and that what was marked as Division Exhibit 366, but not admitted, be received into evidence.

I ORDER that the following portions of the transcript receive CONFIDENTIAL treatment: Tr. 729, line 22 through Tr. 770, line 9 (examination of Labi on Labi Ex. 1 (under seal)), and Tr. 961, line 17 through 996, line 18 (examination of Gorgia on Gorgia Ex. 400 (under seal.)).

I FURTHER ORDER, pursuant to Section 8A of the Securities Act of 1933, and Section 21C of the Securities Exchange Act of 1934, that Ronald S. Bloomfield, Victor Labi, and John Earl Martin, Sr., shall cease and desist from committing or causing any violations or any future violations of Sections 5(a) and 5(c) of the Securities Act of 1933, Section 17(a) of the Securities Exchange Act of 1934 and Exchange Act Rule 17a-8;

I FURTHER ORDER, pursuant to Section 21C of the Securities Exchange Act of 1934, that Robert Gorgia shall cease and desist from committing or causing any violations or any future violations of Section 17(a) of the Securities Exchange Act of 1934, and Exchange Act Rule 17a-8;

I FURTHER ORDER, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, that Ronald S. Bloomfield, Robert Gorgia, Victor Labi, and John Earl Martin, Sr., are barred from association with any broker or dealer and from participating in any offering of penny stock;

I FURTHER ORDER, pursuant to Section 8A(e) of the Securities Act of 1933 and Section 21C(e) of the Securities Exchange Act of 1934, that: (1) Ronald S. Bloomfield shall disgorge \$272,342, plus prejudgment interest from June 1, 2007 through the date this Order is issued; (2) Victor Labi shall disgorge \$152,483, plus prejudgment interest from May 1, 2007 through the date this Order is issued; and (3) John Earl Martin, Sr., shall disgorge \$964,868, plus prejudgment interest from June 1, 2007, through the date this Order is issued; and

I FURTHER ORDER, pursuant to Section 21B(a) of the Securities Exchange Act of 1934, that Ronald S. Bloomfield, Robert Gorgia, Victor Labi, and John Earl Martin, Sr., shall each pay a civil money penalty in the amount of \$100,000.

Payment of the disgorgement, prejudgment interest, and civil penalty shall be made on the first day following the day this Initial Decision becomes final. Payment shall be made by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order, payable to the Securities and Exchange Commission. The payment, and a cover letter identifying Respondents and the proceeding designation, shall be delivered to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia 22312. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

The Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111(h). If a motion to correct a manifest error of fact is filed by a party, then that party shall

have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct manifest error of fact.

The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party timely files a petition for review or motion to correct manifest error of fact, or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Brenda P. Murray  
Chief Administrative Law Judge